

U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

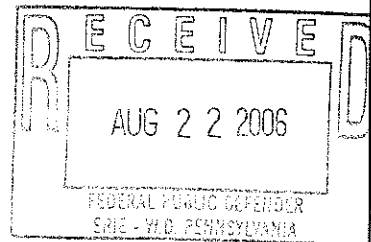
* * * * *

ROBERT LEE DEFOY, *
Petitioner * Case No.
vs. * 00-110 Erie
Superintendent JOHN * District Judge
M. MCCULLOUGH, * McLaughlin
Attorney General D. * Magistrate Judge
MICHAEL FISHER, * Baxter
PENNSYLVANIA BOARD *
OF PROBATION AND *
PAROLE, *
Respondents *
*

ORIGINAL

* * * * *

DEPOSITION OF
DEBORAH COOK
August 11, 2006



Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

DEPOSITION

OF

DEBORAH COOK, taken on behalf of the
Plaintiff herein, pursuant to the Rules
of Civil Procedure, taken before me,
the undersigned, Melissa Beam, a Court
Reporter and Notary Public in and for
the Commonwealth of Pennsylvania, at
the offices of SCI-Laurel Highlands,
5706 Glades Pike, Somerset,
Pennsylvania, on Friday, August 11,
2006, beginning at 7:59 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

THOMAS W. PATTON, ESQUIRE
Assistant Federal Public Defender
1001 State Street, Suite 111
Erie, PA 16501

COUNSEL FOR PETITIONER

SCOTT A. BRADLEY, ESQUIRE
Office of Attorney General
Commonwealth of Pennsylvania
Litigation Section
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

COUNSEL FOR RESPONDENTS

I N D E X

WITNESS: DEBORAH COOK

EXAMINATION

By Attorney Patton 7 - 98

EXAMINATION

By Attorney Bradley 98 - 103

RE-EXAMINATION

By Attorney Patton 104 - 112

CERTIFICATE 113

OBJECTION PAGE

ATTORNEY

PAGE

NONE MADE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

DEBORAH COOK, HAVING FIRST BEEN DULY
SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY ATTORNEY PATTON:

Q. Mrs. Cook, my name's Tom Patton.
I'm an Assistant Federal Public
Defender, and I represent Mr. DeFoy, in
the case that we're here taking the
deposition on today. I'm going to ask
you a series of questions, and if you
don't understand any questions, just
please say so and I'll try to ask it in
a more intelligible manner. Can you
start off just by telling us your full
name?

A. Deborah, D-E-B-O-R-A-H, Cook,
C-O-O-K. Middle initial, R.

Q. And how are you employed?

A. I'm a Hearing Examiner with the
Pennsylvania Board of Probation and
Parole.

Q. How long have you held that

1 position?

2 A. I have been a Hearing Examiner
3 continuously since August of 1996.

4 Q. Did you hold any positions with
5 the Parole Board before you became a
6 Hearing Examiner?

7 A. Yes, yes.

8 Q. What positions did you hold?

9 A. I began as an agent in 1983, and
10 I became a supervisor, I don't recall
11 the date, but it was the late 1980s,
12 perhaps the first part of 1990. That
13 was a supervisor in the field.

14 Q. And you held that position until
15 August of '96, when you became an
16 Examiner?

17 A. That's correct.

18 Q. What are your duties, generally
19 speaking, as a Hearing Examiner?

20 A. Hearing Examiners in
21 Pennsylvania for the Parole Board have
22 three general duties. The first one is
23 to conduct interviews with an eye
24 towards a recommendation or a vote on
25 parole. The second is to do due

1 process hearings that determine whether
2 an individual who has been on parole
3 has, in fact, violated their parole.
4 And if so, what sanctions should be
5 imposed. The third thing is by Act 8
6 of 1995, Pennsylvania Parole Board
7 Hearing Examiners do conduct oral
8 testimonies for the Office of Victim
9 Advocate. It's a sworn testimony given
10 by a victim, who has indicated that
11 they wish to have input into whether an
12 individual is paroled or not. Those
13 are the three basic duties, and
14 everything that goes with them,
15 including some clerical duties.

16 Q. I'd like to focus, if I could,
17 on the first duty that you laid out,
18 interviewing individuals for parole
19 determinations.

20 A. Uh-huh (yes).

21 Q. Could you explain for me how the
22 process works of how you get notified
23 that a particular individual needs to
24 be interviewed? And then once you get
25 that notification, what steps you take

1 to do your interview, what type of
2 material you review, and then how you
3 convey your recommendation to a Board
4 member, and then what interaction you
5 have with the Board member for the
6 parole decision to be made.

7 A. Okay. I think we'll take that a
8 chunk at a time, if we may.

9 Q. Sure.

10 A. Okay. Generally, what happens
11 is either three or four months before
12 an individual's minimum --- it was
13 three months for a long time. It's now
14 four, and I don't remember when that
15 changed, but it's fairly recently,
16 within the last year or so. Four
17 months before an individual's minimum,
18 they are put on a list in our state
19 institutions or with our county
20 institutions as well. We have agents
21 who deal with that for county prisons
22 that have state prisoners in them.
23 They generate a list. I do not know
24 ahead of time in the state institutions
25 who it is that I'm going to be seeing.

1 So when I arrive at a
2 state correctional institution, I am
3 given a list and files, the Board
4 files, as a general rule, which are the
5 official records.

6 Q. Do you know who generates that
7 list?

8 A. I can't really answer that, no.
9 It's kind of a long process that
10 involves both the Department of
11 Corrections --- and we have a full-time
12 staff at each one of the state
13 correctional institutions that deal
14 with that only. And they would more
15 specifically know than I do.

16 Q. Okay.

17 A. I arrive, I get the list.

18 Q. Okay.

19 A. My job is to make sure that my
20 area --- I have a number of
21 institutions that I regularly go to,
22 that I make available to them the days
23 that I can in order to interview the
24 people that are listed for each docket
25 for each month.

1 Q. Okay. Once you arrive at an
2 institution and are given the list of
3 the inmates that you need to interview
4 at that institution, I believe you said
5 that you would be provided with that
6 inmate's file?

7 A. That's correct.

8 Q. Are you referring to the Parole
9 Board's file for that individual?

10 A. Yes, with the exception of video
11 conferencing, when I am given a portion
12 of the file, really, all of the
13 relevant information but not the entire
14 file. And that's because in video
15 conference, the person who has the
16 entire file is a Board member who is
17 joining us by the video conference
18 technology. And he or she has the
19 Board file.

20 Q. If you are not doing a video
21 conferencing hearing, then you would
22 actually have the Board file?

23 A. That's correct.

24 Q. What do you do to prepare for
25 your hearings?

1 A. Interviews.

2 Q. Or your interviews, excuse me.

3 A. Yes. For the interviews, we're
4 required --- the Parole Board is
5 required by Section 19 of the Parole
6 Act to look at certain things as much
7 as they are capable of being known.
8 And that's one of the --- when I
9 approach a file, that is the very first
10 thing that I do. I will look for
11 judge, sentencing judge, and
12 prosecuting district attorney input.
13 We solicit that input, again, by law.
14 It is the choice of the judge or the
15 district attorney whether they reply or
16 not. So that's the first thing that I
17 look for.

18 And then Section 19 requires
19 that we look at the offense itself, the
20 criminal history, the person's general
21 character while they were in the
22 community as much as that can be
23 ascertained, what the individual has
24 done in prison that would help or hurt
25 their chances for parole, victim's

1 input. Again, I had mentioned Act 8 of
2 1995. There was a previous act from
3 1990, I believe, that first established
4 that. That is part of what we're
5 required to look at.

6 So it's essentially looking at
7 the offender's entire history as much
8 as it can be ascertained, including any
9 Court documents that might be
10 forwarded. We do request --- at the
11 same time that judges and district
12 attorneys are surveyed, if you will, I
13 believe we also send a letter to the
14 Clerk of Courts. I cannot answer that
15 specifically, that is not my duty, but
16 I believe that's one of the things that
17 we do.

18 Q. When you get the file, has the
19 institutional parole officer generally
20 completed some kind of form for your
21 review before conducting the interview?

22 A. Actually, it's a report called a
23 summarization report. It can be given
24 by different names depending on whether
25 it's the person's minimum interview or

1 a review or a reparole review, but yes,
2 we do. We get an original one, which
3 covers basically what I've already told
4 you Act 19 covers with the exception of
5 victim's input. The Act 8 requires
6 that the victim's input be kept
7 separately. And, essentially, only
8 those people who vote or recommend
9 parole, and that would be Hearing
10 Examiners and Board members and the
11 Office of Victim Advocate have access
12 to that. So our agents don't.

13 But the report that they
14 generate, the summarization report,
15 includes current offense, the official
16 version, the offender's version, prior
17 record, social history, parole
18 planning, which of course is another
19 major part of this, and what the
20 individual has done in the institution
21 in terms of what programs have been
22 prescribed and what programs have been
23 completed or not completed. And
24 misconduct history.

25 Q. So you have that when the file

1 is given to you for a particular inmate
2 that you need to interview, that
3 summarization report should be in that
4 file for you to review?

5 A. Yes, that's correct.

6 Q. Do you also receive any
7 paperwork from the Department of
8 Corrections with regards to what their
9 recommendation is ---

10 A. Yes.

11 Q. --- as to whether or not a
12 particular inmate should or should not
13 be paroled or reparaoled?

14 A. Yes, we do.

15 Q. You get the actual report that
16 the Department of Corrections gets?

17 A. Well, I don't know what all
18 reports the Department of Corrections
19 generates. We generally have what is
20 called the DC-1, which is the initial
21 sentence summary report, and a DC-
22 16(E), which is the sentence status
23 report itself. And that basically is
24 what the individual is doing, minimum
25 and maximum dates, whether there are

1 any detainers pending, that sort of
2 thing. Then we usually get the
3 Department of Corrections vote sheet.
4 That may not come. Sometimes if the
5 individual is coming to us very
6 rapidly, doing a very short sentence,
7 there may not be a complete Department
8 of Corrections, what we call DC-13(A).
9 We may not have that. We may have a
10 memo form, again, because for example,
11 if we have an individual who's doing a
12 one to two-year sentence and he's
13 already done eight months in the county
14 prison before he is classified, he's
15 very close to his minimum. And so the
16 Department of Corrections will give us
17 a memo form as opposed to a vote sheet.

18 Q. So will you review the Parole
19 Board's file for an individual,
20 including the documents we've just
21 discussed prior to your interview of
22 the inmate?

23 A. Yes, yes.

24 Q. Prior to the interview, do you
25 complete the Parole decision-making

1 guidelines forms?

2 A. I do not do those. Those are
3 generated by the agents in the
4 institution, the parole agents in the
5 institution.

6 Q. So would those parole decision-
7 making guidelines forms then be in the
8 Parole Board file that you would
9 receive for your review?

10 A. Yes, yes.

11 Q. Okay. Do you review those forms
12 at all for accuracy, or do you just
13 look at the forms and see what the
14 recommendation is on those forms as far
15 as whether or not the guidelines are
16 recommending?

17 A. Yes, I usually check the
18 guidelines.

19 Q. After you check the guidelines
20 --- well, let me rephrase that.

21 After you review the inmate's
22 file, do you then do a personal
23 interview with the inmate?

24 A. Yes.

25 Q. And during those interviews,

1 what do you try and --- generally
2 speaking, try to discuss with the
3 inmate?

4 A. Okay. The offense itself, what
5 his or her attitude is towards the
6 offense, whether they accept
7 responsibility for the offense or not,
8 what their prior record is like. And I
9 look for things like is the current
10 offense the first offense of this type
11 or is it one of several. I talk about
12 I have your criminal record here, and
13 there is a gap from 1991 to '96.
14 You've been in trouble before then and
15 in trouble after then, but not during
16 that five years. Why? What was
17 different about that? Any kind of
18 information that I think is important
19 for the Board to know before a decision
20 is made. We discuss mental health
21 history, drug and alcohol history.

22 Another thing Section 19 of the
23 Parole Act, which I did not mention
24 before, requires that we do is to look
25 for any evidence of history of family

1 violence. So if there is a family
2 violence or some kind of, for example,
3 molestation where the inmate himself or
4 herself has been molested, that is not
5 something normally that we would
6 discuss.

7 Q. Okay. If the person you are
8 interviewing is up for reparole rather
9 than an initial parole, are any
10 different steps used in the process?

11 A. Well, yes, in that if you're
12 talking from my angle, we also talk ---
13 in addition to all of those things, we
14 also talk about why parole was not
15 successful for this individual.

16 Q. Okay. Generally speaking, how
17 long does your interview with the
18 inmate last?

19 A. That varies. We occasionally
20 have an inmate who does not want to be
21 paroled, and he will sign a paper
22 saying such. He may come in and I may
23 say, okay, I understand you want to
24 max. And do you know when your max is,
25 and if it's longer than a year, I

1 explain to him the parole application
2 procedures, and then he leaves. And
3 that could be two minutes. I've had
4 ones that have gone 45 minutes to an
5 hour.

6 Q. Would 45 minutes to an hour tend
7 to be probably the longest?

8 A. Yes, yes.

9 Q. How many people do you generally
10 have to interview when you come to a
11 particular institution and you get your
12 list?

13 A. We are set up for 15 a day, 15
14 interviews or 15 interviews and
15 hearings combined.

16 Q. After you conduct your interview
17 of the inmate, what do you then do?

18 A. I take notes. Throughout the
19 interview, I generally take notes.
20 Occasionally, I will wait to take my
21 notes until the end, depending on how
22 intensive the individual is, whether my
23 writing will, in fact, distract them or
24 me. But I take notes, and fairly
25 extensive notes, generally. And part

1 of my note taking then is a description
2 of what I believe the person's risk is
3 to the community, what I believe should
4 happen, whether they need additional
5 programs. Just generally, everything
6 that went into why I'm recommending the
7 way that I'm recommending.

8 Q. After the interview and after
9 you've taken your notes, do you then
10 have to form an opinion as to whether
11 or not you are going to make a
12 recommendation that that particular
13 individual is going to be paroled or
14 not --- or should be paroled or should
15 not be paroled?

16 A. Yes. There are basically three
17 --- three alternatives that I have.
18 One is to recommend parole. One is to
19 recommend refuse parole. And there are
20 some sub-recommendations under that.
21 The third one is what we call a
22 continue, where I might see an
23 individual and, for example, they might
24 have an offense that was a violent
25 offense that we know nothing about in

1 the background. And I may ask for a
2 continue, pending receipt of the
3 information, and that would be --- we
4 would try to send out a field agent if
5 it was in this state or through
6 intrastate, someone to get us the
7 paperwork for a particular crime.

8 Q. How do you document your
9 recommendations for it to be passed on
10 to the Board member who is going to
11 review that case?

12 A. In writing, as part of the
13 parole decision-making guidelines.

14 Q. After you fill out the section
15 of the parole decision-making
16 guidelines form that calls for you to
17 make your recommendation, do you then
18 ever personally meet or speak with the
19 Board member who then is going to
20 review that file?

21 A. Sometimes we actually do these
22 in panels. We may personally both be
23 present at the time. And when that's
24 the case, of course, we talk about it
25 after we're done with the interview.

1 Q. If the Board member is actually
2 there and you are seeing an inmate,
3 both yourself and the Board member,
4 will the decision generally be made at
5 the conclusion of your interview and
6 your discussion with the Board member?

7 A. Not necessarily. If it's a
8 violent offense, it will take a
9 majority of the Board. We currently
10 have eight Board members. It will take
11 five out of eight of the Board members
12 to make that decision. So, no, we
13 wouldn't necessarily say yes, in
14 particular. Yeah.

15 Q. Does a majority of the Board
16 have to agree to deny parole or
17 reparole?

18 A. Generally, my understanding is
19 it takes two people. Please understand
20 though that if I'm the first vote and
21 I'm the only one there, I don't know
22 what happens afterwards, because these
23 files leave my hands.

24 Q. And is it accurate to say when
25 you're referring to your vote, is that

1 the recommendation that you put on the
2 parole decision-making guidelines form
3 as to whether or not you believe the
4 inmate should be paroled or reparaoled
5 or denied parole or reparole?

6 A. Yes.

7 Q. And that counts as your vote
8 towards the ultimate outcome of ---?

9 A. It is a recommendation in
10 violent cases because it takes a
11 majority of the Board.

12 Q. And when you refer to violent
13 cases, are you referring to the offense
14 for which that inmate is currently
15 serving a sentence?

16 A. That's correct, that's correct.

17 Q. So in non-violent offenses, it's
18 an actual vote?

19 A. Yes.

20 Q. Okay. What's the difference
21 between it being an actual vote and a
22 recommendation?

23 A. Okay. The vote comes about
24 because of the original offense, the
25 offense that the individual's in jail

1 for. Violent offenses are essentially
2 your part one offenses that include the
3 homicides, robberies, crimes against
4 people, essentially and including arson
5 against people. The other crimes are
6 the crimes that are more likely the
7 property offenders, drug offenders.
8 Firearms offenses are, unless the
9 firearm is discharged and someone is
10 harmed and it becomes an assault, that
11 would not be a violent offense. In
12 those cases, yes. My vote is a vote.

13 In the violent offenses, my vote
14 is a recommendation, again, because it
15 takes five out of --- well, the
16 majority of the Board, however many
17 people there are at that time.

18 Q. After you have filled out the
19 parole decision-making guideline forms
20 with your vote or recommendation, what
21 do you then do with the decision-making
22 guideline form?

23 A. It is part of the Board file.
24 Once it leaves my hands, I don't know
25 the specific way that it makes its way

1 to the Board. Our institutional parole
2 agents would be the ones who would know
3 that.

4 Q. In the situation where a Board
5 member is not with you at the interview
6 of the inmate, are you ever contacted
7 by any of the Board members for them to
8 discuss with you your interview of a
9 particular inmate?

10 A. It's possible. I don't recall
11 any recently.

12 Q. So it would be accurate to say
13 generally or most of the time once you
14 make your either recommendation or
15 vote, the file gets passed on to the
16 Board and you have no further input
17 into the decision?

18 A. Generally, yes, with the
19 exception of continues. And then that
20 information would be sent back to me
21 and then I would again review the file
22 and my notes and either make a
23 recommendation at that point or
24 schedule the person for another
25 interview if I felt there was something

1 that was important that needed to be
2 dealt with between the inmate and the
3 Board.

4 Q. Now, is it accurate to say that
5 there are times when the Board, when
6 they are --- let's, for example, focus
7 on a situation where someone has had
8 their parole revoked, and the Board
9 issues an initial green sheet setting
10 the amount of back time that the
11 offender must serve. And assume that
12 the Board states on the green sheet
13 that the inmate needs to participate in
14 certain programming prior to the
15 decision as to whether or not the
16 inmate will be reparaoled.

17 A. Okay.

18 Q. Do you look at the green sheets
19 to see what the Board had told the
20 inmate they wanted him to do as to see
21 if that has, in fact, been done?

22 A. Yes.

23 Q. And I would assume that that was
24 done when you're reviewing the file,
25 you'll review the green sheet and see

1 what recommendations may have been
2 made; is that accurate?

3 A. Yes. Part of our reparole
4 summarization reports, however, include
5 a list of what the Board actions were
6 in this particular case, or for this
7 particular individual, I should say,
8 because they may have prior cases and
9 we may very well see Board actions that
10 predate the current sentence.

11 Q. And if the inmate has not done
12 the programs that were listed by the
13 Board in his green sheet, is that taken
14 into consideration by you in making
15 your recommendation?

16 A. Yes.

17 Q. If the Board has, and their
18 green sheet has stated that an inmate
19 needs to participate in a specific
20 program, whatever that program may be,
21 if the inmate does not do that program,
22 how does that impact your decision?

23 A. Okay. Well, it depends. It
24 depends on whether the inmate didn't do
25 it because he or she chose not to do

1 it, or they're on a waiting list, or
2 that particular program and this
3 particular SCI is not available. There
4 are some factors that go into that.

5 Q. What if the Defendant has
6 voluntarily or --- I should not say
7 voluntarily but has by their own
8 decision not participated in the
9 program?

10 A. Well, generally, if it is a
11 program that is specific to their
12 crime, I'm going to recommend that they
13 not be reparaoled.

14 Q. And is that true of any program
15 that the Board may put on the green
16 sheet for the inmate?

17 A. Yes, I think so.

18 Q. Specifically, with regards to an
19 inmate --- and, again, referring to a
20 reparole situation.

21 A. So an individual has been
22 paroled and has been returned for
23 violating their parole?

24 Q. Correct.

25 A. Okay.

1 Q. And if the green sheet tells the
2 individual to be reparaoled, you have to
3 participate in a sex offender
4 program ---

5 A. Uh-huh (yes).

6 Q. --- and if the inmate does not
7 participate in the sex offender program
8 because they have said they don't want
9 to participate in the sex offender
10 program, is it accurate to say that in
11 that situation you will enter a
12 recommendation or a vote that the
13 person not be reparaoled?

14 A. Generally, yes.

15 Q. Have there ever been any
16 exception to that that you can recall?

17 A. I cannot recall a specific
18 exception, no.

19 Q. And would you generally vote not
20 to reparole even if the Department of
21 Corrections was actually recommending
22 that the individual be paroled?

23 A. For a program --- for not
24 attending a program that's specific to
25 the individual's crime, I would

1 probably vote no. Again, there's a lot
2 that goes into the decision, okay. And
3 asking me for general things, I'm
4 trying to answer as completely as I
5 can.

6 Q. Well, can you ever recall in
7 your experience having an individual
8 inmate who was ordered by the Parole
9 Board on their green sheet to
10 participate in sex offender programming
11 who has not participated in sex
12 offender programming who you have
13 either recommended or voted for
14 release?

15 A. I don't recall, no. I don't
16 remember any.

17 Q. Now, is it accurate to say that
18 the Department of Corrections will
19 generally create a prescriptive
20 programming plan for an individual who
21 is put into their custody?

22 A. Well, you're asking me a
23 question about the Department of
24 Corrections' policy that I would have
25 difficulty answering that.

1 Q. Let me ask you this. In the
2 forms you get from the Department of
3 Correction that you get in a parole
4 file that you're reviewing, would those
5 forms discuss whether or not an inmate
6 has participated in the prescribed
7 programming of the Department of
8 Corrections?

9 A. Yes, yes.

10 Q. And is that something that you
11 will take into consideration in making
12 your --- either your vote or your
13 recommendation?

14 A. Yes.

15 Q. Have there been instances where
16 an inmate may not have done all of the
17 programs that the Department of
18 Corrections may have recommended for
19 that inmate where you have still, after
20 your review of the file and your
21 interview of the inmate, made a vote or
22 recommendation for release?

23 A. I'm sure there have been.

24 Q. So then it's accurate to say
25 that there is a distinction between an

1 inmate not completing a program that
2 the Board themselves have indicated
3 they wanted the inmate to participate
4 in on the inmate's green sheet, versus
5 an inmate, perhaps, not completing a
6 program that the Department of
7 Corrections has recommended that that
8 inmate participate in?

9 A. I think you need to ask that
10 question again. I'm not sure I
11 understand it.

12 Q. Okay. When you're reviewing
13 your files and making your decision as
14 to what your vote or recommendation is
15 going to be, is it accurate to say that
16 there is a distinction between an
17 inmate not completing a program that
18 the Parole Board specifically stated on
19 a green sheet that they wanted that
20 inmate to complete versus the inmate
21 not completing a program that the
22 Department of Corrections may have
23 recommended that the inmate complete?

24 A. I see. To a certain extent,
25 there may be a difference, if you're

1 talking about reparole reviews.
2 Because the Board had jurisdiction of
3 this individual's case and this
4 individual during the time that they
5 were on parole there may be information
6 in the Board file about that parole
7 that would suggest to us that there is
8 a program that this individual really
9 should have before they're released on
10 parole in order for them to be
11 successful on parole.

12 Q. Based on your experience working
13 with the Parole Board, and including
14 any training that you may have gotten,
15 are there any rules or guidelines that
16 you have to follow with regard to
17 whether or not an inmate has
18 participated in the sex offender
19 program, if they have been so directed
20 by the Parole Board, as to how you are
21 supposed to weigh that factor in making
22 your decision?

23 A. Are you asking me are there any
24 written guidelines? Is that what
25 you're asking me?

1 Q. Well, we'll start with that.

2 Are there any written guidelines?

3 A. The guidelines themselves, the
4 parole decision-making guidelines talk
5 about the type of crime and the
6 participation in the programs.

7 Q. Okay. Outside the parole
8 decision-making guidelines, are there
9 any --- whatever you want to call them,
10 rules or policies whether written or
11 unwritten regarding reparing an
12 individual who has been recommended to
13 participate in sex offender programming
14 who has not participated?

15 A. Specifically to reparole, I
16 don't recall of anything, but certainly
17 to parole, yes. The Board has been
18 very serious about sex offenders
19 receiving sex offender treatment before
20 they're being considered for parole.
21 And that has been for many years. It
22 predates my time as a hearing examiner,
23 in fact.

24 Q. When you say that the Board has
25 been very strict on wanting a sex

1 offender to have a sex offender
2 treatment to be --- I forget the way
3 you said it, to be considered for
4 parole?

5 A. They can be considered for
6 parole whether they've had the program
7 or not, but for the decision --- for
8 the person to be paroled, the Board has
9 been very serious about them having sex
10 offender treatment.

11 Q. Okay. In your years with the
12 Board, whether working as an agent or a
13 supervising agent or a hearing
14 examiner, can you ever recall an inmate
15 who has been ordered to take the sex
16 offender program who has not taken the
17 sex offender program being paroled or
18 reparaoled?

19 A. I cannot recall a single
20 specific instance that I have been
21 involved with. The only thing I would
22 add to that is as I had indicated
23 before the proceeding began, we are
24 sitting in what is essentially a prison
25 hospital. We have individuals here who

1 may not be mentally competent, and
2 perhaps would be going to South
3 Mountains as an example, which is a
4 Department of Public Welfare situation.
5 I could see where maybe the Board would
6 want to parole someone like that, but
7 that would be a major exception, I
8 would think.

9 Q. So ---.

10 A. And, again, I am speaking not of
11 a specific case because I do not recall
12 any specific cases.

13 Q. Okay. But it is accurate to say
14 that --- well, I want to take this in
15 two steps. Generally, based on your
16 knowledge and experience working for
17 the Parole Board for a number of years,
18 is it accurate to say that you know
19 that it has been the Board's policy, as
20 you said, for a number of years even
21 predating your work with the Board that
22 if an inmate did not, does not,
23 participate in sex offender program, if
24 ordered to, that that inmate is not
25 going to be paroled or reparaoled?

1 A. Well, specifically, I said that
2 it was the sex offender program
3 expectations predated my time as a
4 hearing examiner, not as a ---

5 Q. Okay. I'm sorry.

6 A. --- worker for the Parole Board,
7 but yes, it's been for sometime now.

8 Q. Is it also accurate to say that
9 with regard to the time since you've
10 been either an agent or a supervising
11 agent or a hearing officer that you
12 cannot recall any specific case where
13 an inmate who was ordered to take the
14 sex offender program but who did not
15 take the program has been paroled or
16 reparaoled?

17 A. I cannot recall a specific case.

18 Q. All right. Can you remember any
19 specific case where, since you've been
20 a hearing examiner, where an individual
21 was directed to take the sex offender
22 program and who did not take the sex
23 offender program, where you have voted
24 or entered a recommendation that the
25 individual be either paroled or

1 reparaoled?

2 A. No.

3 Q. So would it be accurate to say
4 that perhaps even if the parole
5 decision guidelines were saying that
6 the person would be an acceptable
7 parole or reparole candidate, and even
8 if the Department of Corrections was
9 recommending that the individual be
10 paroled, if that individual had been
11 ordered by the Board in a green sheet
12 to take the sex offender program, but
13 had not taken the sex offender program,
14 it would still be your recommendation
15 or vote that the person not be paroled
16 or reparaoled because they did not
17 complete the sex offender program?

18 A. Well, you're asking a question
19 of finality there, and what I would say
20 to you is that if the Department of
21 Corrections did not recommend an
22 individual for the sex offender
23 program, there would generally be a
24 reason for that, okay, that would be
25 part of the Department of Corrections'

1 information that we would normally get,
2 again, in that file review. And in
3 that particular case, they would
4 explain generally why --- that they
5 have done an evaluation, because we
6 would --- they do evaluations on people
7 who have sex offenses whether it's a
8 current one or a previous one.

9 And at that point, that sex
10 offender evaluation would be one of the
11 things that I would read, and it would
12 explain why the individual who did the
13 assessment or evaluation believes that
14 sex offender treatment is not needed.

15 Q. Assume that you're interviewing
16 an individual where the parole
17 decision-making guideline forms
18 recommend parole.

19 A. Okay.

20 Q. But the person's green sheet has
21 stated that they need to do the sex
22 offender program. The Department of
23 Corrections has indicated that he needs
24 to do the sex offender program, but the
25 individual has not done the sex

1 offender program, but the Department of
2 Corrections nonetheless recommends that
3 the individual be paroled, would it
4 still be your practice to vote or
5 recommend that the individual not be
6 paroled or reparaoled because they have
7 not participated in the sex offender
8 program?

9 A. You're asking a general question
10 that's hard to answer for the simple
11 reason that each case is somewhat
12 unique, and there is information that
13 is weighed in each case, okay. So to
14 give a blanket answer to that, I think,
15 is difficult. Again, if I know of a
16 specific case, then I might be able to
17 explain why a particular thing would
18 happen in a particular way. To give a
19 general answer to that, I don't know
20 that I can.

21 Q. I want to show you what I'll
22 mark as Petitioner's Exhibit A.

23 (Petitioner's Exhibits A,
24 B and C marked for
25 identification.)

1 ATTORNEY BRADLEY:

2 You can review that.

3 A. Thank you.

4 BY ATTORNEY PATTON:

5 Q. Take a second to look that over.

6 WITNESS COMPLIES

7 A. Okay. I've had a chance to look
8 that over.

9 BY ATTORNEY PATTON:

10 Q. Okay. I wanted you to look at
11 Petitioner's Exhibits B and C, which
12 are then subsequent green sheets in the
13 same case issued by the Board.

14 WITNESS COMPLIES

15 A. Okay.

16 BY ATTORNEY PATTON:

17 Q. Now, Exhibit A, does that appear
18 to be the green sheet for Robert DeFoy,
19 with a parole number of 1226J,
20 institution number AK1017?

21 A. Yes.

22 Q. Recommitting Mr. DeFoy as a
23 convicted parole violator to serve a
24 40-month --- to serve 40 months of back
25 time?

1 A. Yes.

2 Q. Okay. And does the green sheet
3 also state that Mr. DeFoy should
4 participate in sex offender treatment?

5 A. Yes, it does.

6 Q. And Exhibit B, is that also a
7 green sheet for Mr. DeFoy setting a
8 reparole date for Mr. DeFoy on that 40-
9 month back time sentence or commitment,
10 I should say?

11 A. Yes, to a state detainer
12 sentence, not to the street.

13 Q. Correct. And does that green
14 sheet also indicate that Mr. DeFoy
15 should participate in a sex offender
16 treatment program?

17 A. It does not specifically say
18 that. What it says is upon condition
19 that there are no misconducts and you
20 remain involved in required programs.

21 Q. And is it accurate to say that
22 Exhibit B, the green sheet setting the
23 reparole date, refers back to
24 Petitioner's Exhibit A?

25 A. Yes.

1 Q. Okay.

2 A. It seems to.

3 Q. Which in Petitioner's Exhibit A
4 it does state that Mr. DeFoy is to
5 participate in sex offender treatment
6 program; is that correct?

7 A. It does.

8 Q. Okay. Now, in your experience,
9 would the Petitioner's Exhibit B ---
10 well, let me clarify.

11 Does Petitioner's Exhibit C
12 indicate that it is adjusting the
13 reparole date that is listed on
14 Petitioner's Exhibit B to correct
15 basically an error from changing the
16 release date from March 20 --- I
17 believe it's ---

18 A. 25th, '93.

19 Q. --- 25th, 1993 to March 25th of
20 1997?

21 A. Yes.

22 Q. Okay. Have you seen green
23 sheets like that before, setting
24 reparole dates?

25 A. Yes. Uh-huh (yes).

1 Q. When that green sheet sets the
2 reparole date, does that mean that the
3 person --- that the Board is at least
4 conditionally ordering that the person
5 be paroled on the date listed in that
6 green sheet?

7 A. In this particular case, yes.
8 That's what it looks like.

9 Q. Okay. In that case, in Mr.
10 DeFoy's situation then when you have
11 this Petitioner's Exhibit B, which is
12 setting him, giving him a reparole date
13 in conjunction with Petitioner's
14 Exhibit C of March 25th of 1997, would
15 you generally then end up doing an
16 interview of Mr. DeFoy prior to March
17 25th of 1997?

18 A. On the surface with what we have
19 here, I would say no, but that's
20 difficult to answer in specific here
21 because these three sheets of paper
22 only represent a very small portion of
23 what might have happened in this case.

24 Q. Sure. Given what are in those
25 exhibits, short of some action taken by

1 the Board to change what's stated in
2 those exhibits, would Mr. DeFoy have
3 normally been paroled to his detainer
4 sentence on March 25th, 1997, meaning
5 if there was no intervening action by
6 the Board?

7 A. I'm guessing that's what would
8 happen, but understand that is a guess.
9 This is a portion of how things are
10 done with the Board that I do not deal
11 with.

12 Q. Okay.

13 A. Okay? There are some
14 administrative things here that I have
15 no knowledge of.

16 Q. Okay.

17 A. Okay?

18 (Petitioner's Exhibit D
19 marked for identification.)

20 BY ATTORNEY PATTON:

21 Q. Let me show you Petitioner's
22 Exhibit D, which is a green sheet
23 rescinding the order of reparole and
24 setting Mr. DeFoy for the next parole
25 docket.

1 A. Okay.

2 Q. When it says setting him for the
3 next parole docket, is that --- when
4 they refer to that parole docket, is
5 that what we talked about a little bit
6 earlier about when you get the list of
7 people who are at their minimum, you
8 come to the institution, get that list,
9 and you get those folks' files and do
10 your interviews?

11 A. Yes. Again, that's something
12 that I don't deal with. The mechanism
13 of setting up the next available
14 docket, et cetera, is something that I
15 do not do, so I don't know the ins and
16 outs of it.

17 Q. Okay.

18 A. I can't specifically answer
19 that.

20 ATTORNEY BRADLEY:

21 Can we set these aside?

22 ATTORNEY PATTON:

23 Sure.

24 (Petitioner's Exhibit E
25 marked for

1 identification.)

2 BY ATTORNEY PATTON:

3 Q. Please take a minute to review
4 Petitioner's Exhibit E.

5 WITNESS COMPLIES

6 ATTORNEY PATTON:

7 I'm just going to try and
8 clarify the record in that
9 Petitioner's Exhibit A is a
10 green sheet dated 12/9 of '92.
11 Petitioner's Exhibit B is a
12 green sheet dated 11/5 of '93.
13 Petitioner's Exhibit C is a
14 green sheet dated 11/23/93, and
15 Petitioner's Exhibit D is a
16 green sheet dated April 23rd of
17 1997.

18 A. This is cut off at the bottom.

19 BY ATTORNEY PATTON:

20 Q. This copy might have a little
21 more.

22 A. Well, I think I know what it
23 says, but --- no. The one I have is
24 actually a little bit better. Okay.
25 I'll go with what I believe this to

1 say. I can't --- this is Exhibit E,
2 and we're looking at page four, I guess
3 it is. The bottom is slightly cut off.
4 I believe I know what it says. It says
5 an appeal of PCRA, the conviction
6 stands until that matter is resolved.

7 Q. Petitioner's Exhibit E, is that
8 a parole decision-making guidelines for
9 reparole review for Mr. Robert DeFoy?

10 A. It is. It's a copy of such,
11 yes.

12 Q. Okay. Does it state that the
13 day of the interview was June 19th of
14 1997?

15 A. It does.

16 Q. Page one, two and three of that
17 document, who would have filled that
18 --- even if you don't know the specific
19 individual, would you have filled those
20 pages out, or would the institutional
21 parole officer have filled that out?

22 A. Page one and two would have been
23 filled out by the institutional parole
24 agent.

25 Q. And who would have filled out

1 page three, four?

2 A. And that's completed by an
3 interviewer, either a Board member or a
4 hearing examiner.

5 Q. Okay. Pages three, four, five,
6 six and seven would have been filled
7 out by the interviewer?

8 A. Not page seven. Page seven
9 would have been done by the
10 institutional staff.

11 Q. Okay. Based on reviewing the
12 document, does it appear to you that
13 you were the hearing examiner that
14 filled out pages three, four, five and
15 six of this document?

16 A. It does.

17 Q. Okay. Is it accurate to say
18 that based on pages one and two of the
19 document that the parole decision-
20 making guidelines made a policy
21 recommendation of parole on this case,
22 or what, in fact, would have actually
23 been reparole?

24 A. The factor score is four, and
25 yes, that would be a parole. Again, of

1 course, on page two, you note at the
2 top it says each unfavorable factor
3 listed below is a possible reason for
4 refusing parole as a matter of policy.
5 It's the first line there.

6 Q. But, generally, the guideline
7 would recommend parole or reparole in
8 this particular case?

9 A. Yes.

10 Q. Now, on page three, subsection B
11 entitled Factors Countervailing a
12 Guideline Recommendation to Parole.

13 A. Uh-huh (yes).

14 Q. And in that, there is marked off
15 in the yes column for --- there's three
16 items that would countervail a
17 guideline recommendation of parole;
18 correct?

19 A. Yes.

20 Q. And the first one that is
21 checked indicates that the client had a
22 recent psychiatric/psychological report
23 which causes concern?

24 A. Yes.

25 Q. Would you have personally

1 reviewed the psychiatric or
2 psychological report that is referred
3 to there?

4 A. I have no remembrance of that in
5 this particular case. Again, this is
6 1997.

7 Q. Sure.

8 A. Okay. This is the year 2006, so
9 it's nine years later. I will say that
10 psychiatric and psychological reports
11 are very important, and as a general
12 rule, I always look at them, at what
13 ones are available, yes.

14 Q. Okay.

15 (Petitioner's Exhibit F
16 marked for
17 identification.)

18 BY ATTORNEY PATTON:

19 Q. Please take a look at
20 Petitioner's Exhibit F.

21 WITNESS COMPLIES

22 BY ATTORNEY PATTON:

23 Q. Does that appear to be the
24 summarization report prepared by the
25 --- would it be the institutional

1 parole agent for Mr. DeFoy's
2 consideration for parole in June of
3 1997?

4 A. That's what it looks like, yes.

5 Q. Okay. And does that
6 summarization report indicate that
7 there's additional information and the
8 box is checked off for psychological or
9 psychiatric/psychological?

10 A. Yes.

11 Q. Okay. Would that normally
12 indicate that the psychological or
13 psychiatric report --- a psychological
14 or psychiatric report would be attached
15 or included with the summarization
16 report?

17 A. Generally.

18 Q. Okay.

19 (Petitioner's Exhibit G
20 marked for
21 identification.)

22 BY ATTORNEY PATTON:

23 Q. Please look at Petitioner's
24 Exhibit G, which the parties previously
25 agreed is the psychiatric or

1 psychological report referred to in
2 Section IV(B)(2) of the parole
3 decision-making guidelines used in the
4 June '97 review of Mr. DeFoy for
5 reparole.

6 WITNESS COMPLIES

7 A. Yes.

8 BY ATTORNEY PATTON:

9 Q. Okay. So Petitioner's Exhibit G
10 would be the psychiatric or
11 psychological report that the parole
12 decision-guideline making form is
13 referring to when it lists the
14 countervailing --- factors
15 countervailing the guideline
16 recommendation of parole?

17 A. That's certainly what it looks
18 like, yes, although there is no date on
19 page three of the guidelines of
20 6/19/97, Exhibit E.

21 Q. There's no date given for the
22 psychiatric or psychological report?

23 A. That's right, that's right.

24 Q. There's also in the factors
25 countervailing the guideline

1 recommendation to parole, it indicates
2 that there's an unfavorable
3 recommendation from Board staff; is
4 that correct?

5 A. Board staff is underlined.

6 Q. You would have been the person
7 that --- well, let me back up. In the
8 preprinted form as a countervailing
9 factor, it has listed there an
10 unfavorable recommendation from the
11 Department of Corrections or Board
12 staff; correct?

13 A. Yes.

14 Q. And then Board staff is
15 underlined?

16 A. Yes.

17 Q. And the yes box is checked next
18 to that countervailing factor?

19 A. Yes.

20 Q. Okay. Which would indicate that
21 the Board staff had recommended that
22 Mr. DeFoy not be reparaoled?

23 A. That's what it appears to say,
24 yes.

25 Q. Okay.

1 A. Again, I have no specific
2 recollection of this case, it being
3 nine years ago.

4 Q. For Petitioner's Exhibit F, the
5 summarization report, does that
6 indicate kind of in the middle of the
7 first page of that document that the
8 superintendent or warden who provides
9 the recommendation of the Department of
10 Corrections was recommending reparole?

11 A. Yes.

12 Q. Okay. You also on the parole
13 decision-making guidelines form
14 indicate that the other countervailing
15 factor, you have number six, which is
16 there are other factors supporting a
17 parole refusal checked, and then have
18 handwritten in refuses --- I believe
19 that's SOT?

20 A. Yes.

21 Q. Which would stand for sex
22 offender treatment?

23 A. I believe so, yes.

24 Q. And a negative attitude; is that
25 correct?

1 A. That's correct.

2 Q. Is it accurate to say that this
3 section of the parole decision
4 guideline making forms is where you
5 would list things that would counsel,
6 perhaps, against recommending parole or
7 reparole, even though the guidelines
8 themselves are recommending parole or
9 reparole?

10 A. Well, it does both that, but
11 countervailing can go the other way,
12 too, and the top part would be the
13 opposite.

14 Q. Correct. But Part B of it ---

15 A. Yes.

16 Q. --- is countervailing factors,
17 meaning it's countervailing the
18 guideline recommendation of parole ---?

19 A. To parole, yes.

20 Q. Okay. Now, at the bottom of
21 page three, there's some preprinted
22 language that states instructions, the
23 countervailing factors to a guideline
24 recommendation to refuse parole (A) or
25 to parole (B) are for information to

1 the decision makers only.
2 Countervailing factors checked in (B)
3 are not to be communicated in the Board
4 action as such. The Board
5 Member/Hearing Examiner will supply the
6 appropriate reasons for refusal in
7 his/her decisions in Section VII of
8 this guideline document. What does
9 that mean?

10 A. Well, going back to 1997, I'm
11 not sure I remember all of the ins and
12 outs, but what it appears to say to me
13 is that on page six of this document,
14 the interviewer or Board member would
15 be required to put in their reasons for
16 refusal.

17 Q. And that any countervailing
18 factors should not be listed in that
19 section, meaning Section VII?

20 A. I guess specific ones. We're
21 being very specific on page three, and
22 page six then, the factors are listed,
23 and that's the section that would be
24 communicated as part of the Board
25 action, if I remember correctly.

1 Q. Is it accurate to say that that
2 communication is basically the green
3 sheet that would be issued, in this
4 case, based on the guideline --- the
5 completed parole decision-making
6 guidelines form, the green sheet,
7 saying that parole would be or reparole
8 would be denied? Then the green sheet
9 would then list the factors that are
10 listed in Section VII of the form?

11 A. Yes.

12 Q. Okay. Now, in Section VII where
13 it's given reason for parole refusal,
14 it has checked off factor cited in
15 guideline section and then it refers to
16 Roman numeral III and IV and VII. Now,
17 the Roman numeral III, is that
18 referring to Section III of the
19 decision --- the parole decision-making
20 guidelines form?

21 A. Yes.

22 Q. And Section Roman numeral III
23 --- Number IV is removed for CSC, which
24 would stand for ---?

25 A. Community --- it's actually

1 community corrections center. I can't
2 remember what we called it back then.
3 The CSC predated that, community
4 services center, or something like
5 that. Essentially, it would be a
6 halfway house.

7 Q. Okay. And so that's one factor
8 that the guidelines took into account
9 in determining whether or not Mr. DeFoy
10 should be reparaoled; correct?

11 A. Yes.

12 Q. And you received some points
13 under the guideline for having
14 previously been removed from a halfway
15 house; is that correct?

16 A. Yes.

17 Q. And Roman numeral III, number
18 seven is assault of instant offense;
19 correct?

20 A. Yes.

21 Q. Which Mr. DeFoy also had
22 received a point under the guidelines
23 for the fact that that was an assault,
24 it was an assault of instant offense;
25 correct?

1 A. Yes.

2 Q. But even having received those
3 points, Mr. DeFoy's total score under
4 the forms resulted in a guideline
5 policy recommendation of reparole?

6 A. That's correct.

7 Q. The other reason --- the next
8 reason given for refusal is failure to
9 participate in sex offender's
10 treatment; is that correct?

11 A. Yes.

12 Q. And then you have next checked
13 off under subsection seven, Section F,
14 which states other than blank, and then
15 written into the blank is misconduct;
16 is that right?

17 A. Yes.

18 Q. Okay. Referring back to Section
19 III of the guideline form, that section
20 of the form calls for points to be
21 added due to unfavorable factor score
22 based on misconducts; correct?

23 A. Yes. I would point out that
24 it's based on misconducts, but there
25 are specific ways that those scores are

1 generated, and it involves the number
2 of Class I or Class II misconducts. So
3 you could have a misconduct ---

4 Q. Correct.

5 A. --- and still receive a zero.

6 Q. Correct, because the form states
7 that you can have a misconduct, but
8 still end up getting zero points on the
9 form for misconducts?

10 A. Yes. Uh-huh (yes). And, again,
11 you would have to read that particular
12 section on page two of the unfavorable
13 factors for institutional performance.

14 Q. I'm sorry. Can you repeat that?

15 A. Sure. In order to get, for
16 example, a score of one, you would need
17 to have three or more Class II
18 misconducts, or two Class I and one
19 Class I misconduct, or two or more
20 Class I conducts during the last 12
21 months or the last one-half of the
22 minimum sentence, whichever is longer.
23 So I do not know specifically in this
24 case, but it appears as though there
25 was at least one misconduct. If there

1 was one misconduct, he would still get
2 a zero, but he still had a misconduct.

3 Q. Correct. And the information
4 about misconducts would be gained from
5 the Department of Corrections?

6 A. Yes. And would probably be
7 documented in one of the --- either the
8 Department of Corrections summarization
9 report or the Parole Board
10 summarization. Some of these forms
11 have changed over the years, so you're
12 asking me to go back nine years. It
13 makes remembering somewhat difficult.

14 Q. And, in fact, the summarization
15 report, which is marked as Petitioner's
16 Exhibit F ---

17 A. Uh-huh (yes).

18 Q. --- in the second paragraph in
19 the analysis section states, the
20 second-to-last sentence of that
21 paragraph ---

22 A. Yes.

23 Q. --- that Mr. DeFoy had received
24 one Class I Misconduct on November 6th
25 of 1996 for refusing to obey an order?

1 A. Yes.

2 Q. Was sanctioned with 30-day cell
3 restriction. But under the parole
4 decision-making guidelines forms having
5 the one misconduct would not result in
6 Mr. DeFoy not receiving any unfavorable
7 factors?

8 A. That's right. Uh-huh (yes).

9 Q. Because the guidelines --- when
10 the guidelines were written, the
11 decision was made that you would only
12 receive a point if there were a certain
13 number of these conducts ---

14 A. That's right. Uh-huh (yes).

15 Q. --- that had been obtained?
16 Okay.

17 A. Okay. Can we take a break here
18 for just a moment?

19 ATTORNEY PATTON:

20 Certainly.

21 A. I need to step down the hall.

22 SHORT BREAK TAKEN

23 BY ATTORNEY PATTON:

24 Q. While the parole decision
25 guideline making form for 1997, which

1 is Petitioner's Exhibit E, while you
2 had originally marked the
3 recommendation for parole, that was
4 qualified by saying you wanted to get
5 some further clarification on the
6 status of Mr. DeFoy's July 16th, 1992
7 conviction for involuntary deviate
8 sexual intercourse and corruption of a
9 minor and statutory rape, once you got
10 clarification on that conviction ---?

11 A. If I may stop you for a second?

12 Q. Sure.

13 A. You see that the Board decision
14 is actually continue. The only reason
15 that the X is marked under parole is
16 for the continue. The guideline
17 recommendation, you would put the check
18 --- if the guidelines say to parole, I
19 would put the check there. If the
20 guidelines say refuse, I would have put
21 it there, okay. So when you say that I
22 checked to parole, that's actually not
23 accurate. What I checked was continue
24 pending receipt of information.

25 Q. Okay. Thank you.

1 A. Okay. So it was not a parole
2 decision. It was a continue.

3 Q. Continue. Okay.

4 A. Uh-huh (yes).

5 Q. Because you wanted to get more
6 information on the status of Mr.
7 DeFoy's conviction?

8 A. Yes. Apparently so. Uh-huh
9 (yes).

10 Q. Once you got some clarification
11 on the status of that conviction, you
12 made a recommendation to refuse parole?

13 A. That's correct.

14 Q. Okay.

15 A. According to what I have written
16 here.

17 Q. Right. Because Mr. DeFoy at
18 this point in time was serving a
19 sentence for a robbery, is it accurate
20 to say that in this particular case
21 then you would just be making a
22 recommendation, not a vote, because it
23 was a violent offense?

24 A. That's a question I can't answer
25 because the Board policy has been

1 different over the years, and I do not
2 recall what it was at this particular
3 time.

4 Q. Okay. But whether it was a
5 recommendation or a vote, your position
6 was that Mr. DeFoy should not be
7 reparaoled?

8 A. That's correct.

9 Q. Which was contrary to at least
10 the recommendation of the guideline
11 making form?

12 A. That's correct.

13 Q. Which was then agreed to by
14 Nicholas Muller, who's a Board member?

15 A. Yes. I believe was the chairman
16 at the time.

17 Q. Now, you indicated before that
18 --- I believe, that there had to be a
19 majority of the Board to vote on these
20 violent offenses?

21 A. At this time.

22 Q. At this time, okay. Could it be
23 that that may not have been what the
24 policy was back in '97?

25 A. That's correct. That's correct.

1 There was a change in the policy. I
2 don't remember when it was, but yes.

3 Q. Okay. But according to this
4 form, at least on this form, there's
5 only one Board member ---

6 A. That's correct.

7 Q. --- that's signing off?

8 A. Uh-huh (yes).

9 Q. Mr. Muller, who agrees with your
10 recommendation?

11 A. That's correct.

12 Q. Okay.

13 A. If I may clarify, there's a
14 historical situation here. When you
15 first asked me about my duties, I
16 clarified for you at that time, my
17 duties as they stand now, and they are
18 still the duties that they've always
19 been. The voting and recommending has
20 changed over the years, okay. There
21 was a time when I became a hearing
22 examiner when my yes was not just a
23 recommendation but also a vote. That
24 changed. When I explained to you in
25 the beginning what we were going ---

1 when you were asking me these questions
2 about voting and recommending, that is
3 specifically for how things are now and
4 have been for sometime, but I don't
5 remember when the cutoff date was.

6 Q. Okay.

7 A. So when I spoke initially when
8 you asked me about my duties and then
9 about voting and recommending, I'm
10 speaking as it is now. It changed over
11 the years. Obviously, we're talking
12 about nine years ago. There were some
13 changes that happened with the Board
14 during that period of time.

15 Q. Okay. With regard to this
16 psychological report that was used in
17 making the decision in this case, which
18 is Petitioner's Exhibit G?

19 A. G. Uh-huh (yes).

20 Q. That report, is it accurate to
21 state, says that in the opinion of the
22 writers of the report, Mr. DeFoy needed
23 to participate in sex offender program
24 before being paroled; correct?

25 A. Yes.

1 Q. And it actually indicates that
2 there was no history of mental illness?

3 A. That's correct.

4 Q. Okay. So there were no mental
5 health problems as such, but it was the
6 opinion of the writers of that report
7 that Mr. DeFoy needed to participate in
8 sex offender treatment?

9 A. Yes.

10 Q. Okay. Based upon your
11 experience as a hearing examiner, is
12 the result in this case consistent with
13 your statements earlier that if the
14 Board has ordered someone to take sex
15 offender treatment and the person does
16 not take the sex offender treatment
17 program, they are not --- they will not
18 be paroled or reparaoled?

19 A. It appears to be consistent.
20 Again, I don't have this entire file.
21 I have only what you've given me.

22 Q. Okay. The parole guidelines
23 recommend release, the Department of
24 Corrections recommended release, but
25 there was not a release; correct?

1 There was not a vote to parole?

2 A. There was not a vote to release.

3 I don't know what happened after this.

4 Q. Okay. Well, there was a vote to
5 actually not release Mr. DeFoy?

6 A. That's what it appears on page
7 six.

8 Q. And that vote not to reparole
9 him was in countervailence to the
10 guideline recommendation to parole and
11 the Department of Corrections' support
12 of Mr. DeFoy's parole?

13 A. The superintendent's
14 recommendation, yes, for the Department
15 of Corrections.

16 Q. Correct. But it's accurate to
17 say that generally the way the Parole
18 Board receives the recommendation of
19 the Department of Corrections is
20 through the warden or superintendent of
21 the particular institution at which
22 that inmate is housed; correct?

23 A. If I remember correctly, Section
24 19 of the Parole Act requires that we
25 ask the superintendent or warden for

1 their recommendation. I have seen over
2 the years vote sheets listing each
3 individual staff member that voted that
4 may say no to a particular individual,
5 but the superintendent may, in fact,
6 say yes because it's his or her right
7 to do so.

8 Q. Okay.

9 A. Although there may be staff
10 input that is less than positive.

11 Q. But, ultimately, the
12 recommendation that comes from the
13 Department of Corrections comes through
14 the warden or superintendent?

15 A. That's correct, as far as I
16 know. Yes.

17 Q. And in this case, that input was
18 support for Mr. DeFoy's reparole to his
19 detainer sentence?

20 A. It appears as though that's the
21 case, yes.

22 Q. And in the reasons listed for
23 denying parole in Section VII of the
24 form, which appears on page six of the
25 form, the factors --- let me rephrase

1 that. The facts listed for supporting
2 the denial of reparole was the fact
3 that Mr. DeFoy had been removed from a
4 halfway house for cause in the past;
5 correct?

6 A. Yes.

7 Q. Which is a factor that was
8 calculated into the guideline forms?

9 A. Yes.

10 Q. That the instant offense was
11 assaultive?

12 A. Yes.

13 Q. Which had also been taken into
14 account by the guideline forms;
15 correct?

16 A. Yes, yes.

17 Q. And he had received a
18 misconduct, which is also a factor that
19 was taken into account by the guideline
20 forms?

21 A. Well, I guess it depends on how
22 you look at it. The guideline forms,
23 obviously, assigned a zero, but that
24 doesn't take away from the fact that he
25 had a misconduct. Yes.

1 Q. Okay. Understood that the
2 misconduct occurred?

3 A. Uh-huh (yes).

4 Q. But it is accurate to say that
5 the existence of the misconduct was
6 considered by the guideline forms?
7 It's just in this particular case there
8 were not a sufficient number of
9 misconducts for Mr. DeFoy to actually
10 receive any points that would have
11 negatively impacted his ---

12 A. Yes, that's correct.

13 Q. --- eligibility for or
14 recommendation for parole under the
15 guidelines?

16 A. Yes.

17 Q. And so the only factor that was
18 not taken into account --- already
19 taken into account by the guidelines
20 recommendation for reparole was the
21 fact that Mr. DeFoy did not participate
22 in the sex offender treatment program;
23 correct?

24 A. It appears to be that way, yes,
25 sir.

1 Q. Okay.

2 A. I would note, however, that I
3 could very well have also listed on
4 page two, Section III, I could have
5 done a number 11 as well, and didn't.
6 And I'm not sure. Again, I don't have
7 the entire file, so I can't speak
8 specifically about that.

9 Q. But you did not list a number
10 11?

11 A. I did not list it. I can see
12 that. I did not list it.

13 Q. And so is it accurate to say
14 that the actual result of Mr. DeFoy not
15 being reparaoled after or --- back that
16 up.

17 At least it's accurate to say
18 that your recommendation or vote that
19 Mr. DeFoy not to be reparaoled is
20 consistent with the testimony you had
21 given earlier about the Board's
22 practice of taking the sex offender
23 treatment requirement seriously, and
24 that if someone had been ordered to
25 take the sex offender treatment program

1 by the Board but did not, in fact,
2 complete the treatment, would not be
3 reparaoled?

4 A. It appears to be consistent with
5 that, yes.

6 Q. Okay. I'm going to walk through
7 some of the same forms for when Mr.
8 DeFoy came up for a reparole hearing in
9 2000.

10 A. Okay.

11 (Petitioner's Exhibit H
12 marked for
13 identification.)

14 BY ATTORNEY PATTON:

15 Q. Take a look at Petitioner's
16 Exhibit H.

17 WITNESS COMPLIES

18 A. All right.

19 BY ATTORNEY PATTON:

20 Q. Does it appear that you were the
21 hearing examiner that would have
22 interviewed Mr. DeFoy and made a vote
23 or a recommendation in his case when
24 Mr. DeFoy was considered for reparole
25 in October of 2000?

1 A. That is my name listed as a
2 panel member on page eight. I would
3 point out that this is a slightly
4 different guideline. And it appears to
5 me as though Mr. Muller and I both
6 signed on 10/24/2000, so it might very
7 well have been a panel interview.

8 Q. Okay.

9 A. And, in fact, it would almost
10 have had to be because these notes that
11 are on page three are not my writing.
12 It has been awhile since I've seen Mr.
13 Muller's writing, but it does appear to
14 have been his.

15 Q. Okay.

16 A. So I would think that he
17 probably conducted the interview and I
18 was present at the time that it was
19 done.

20 Q. Okay.

21 A. Again, nine years ago, it's hard
22 to remember.

23 Q. Certainly.

24 A. I don't remember. But it does
25 appear that this is set up that way.

1 Q. Okay. The fact that your name
2 appears as signing as a panel member
3 would indicate that you were present at
4 the interview, would have reviewed the
5 ---

6 A. Yes.

7 Q. --- parole file and had had
8 input into the ultimate decision?

9 A. Yes.

10 Q. Okay. Did the first two pages
11 of the parole decision-making guideline
12 form end up resulting in at least a
13 guideline policy recommendation for
14 reparole?

15 A. Yes.

16 Q. Does it appear that even though
17 the guidelines recommended reparole,
18 the ultimate determination made or
19 recommended by yourself and by Mr.
20 Muller was that Mr. DeFoy not be
21 reparaoled?

22 A. That's correct.

23 Q. And that he be ordered to serve
24 the unexpired maximum sentence?

25 A. That's what's checked on page

1 seven.

2 Q. Now, is there a place on this
3 form that allows you to put on a reason
4 for --- the reasons for not agreeing
5 with the recommendation of the
6 guidelines?

7 A. Again, these kinds of forms and
8 how the Board has handled Board actions
9 is something that is beyond the scope
10 for me to answer. I'm not a policy
11 maker. I carry out policies. It
12 appears on page seven that the reason
13 for the Board decision is listed there.
14 Following an interview and review of
15 your file, the Pennsylvania Board of
16 Probation and Parole has determined
17 that the mandates to protect the safety
18 of the public and to assist in the fair
19 administration of justice cannot be
20 achieved through your release on
21 parole. You're therefore refused
22 parole and ordered to serve your
23 unexpired maximum sentence.

24 Q. Okay.

25 A. How that happened, I really

1 can't --- I can't answer that. That's
2 a policy decision that I would not have
3 made or had been capable of making in
4 my particular position.

5 Q. When you would have been doing
6 this reparole interview and considering
7 this release, would you have again
8 reviewed Mr. DeFoy's file, parole file,
9 prior to the interview?

10 A. If Mr. Muller was conducting the
11 interview, I might be looking at parts
12 of the file while he was talking, yes.

13 Q. Okay. Is there anything that is
14 in or written on or contained anywhere
15 within this parole decision-making
16 guideline form for this 2000, which is
17 Petitioner's Exhibit H, which would
18 indicate what led you and Mr. Muller to
19 conclude that although the parole
20 decision-making guidelines recommended
21 reparole that Mr. DeFoy not be
22 reparaoled?

23 A. Well, looking at page three,
24 just looking at this form as a form,
25 yeah, I don't remember this particular

1 individual, but I note a couple of
2 things. Number one, the Department of
3 Corrections does not support, which is
4 on line three.

5 Q. Uh-huh (yes).

6 A. Then there's a line skipped, and
7 on line five it says no program
8 involvement and no SOT, meaning sex
9 offender treatment. Looking up to the
10 second line, there was still the York
11 County detainer of six-and-a-half to 13
12 years, and that was for the IDSI,
13 statutory rape and corruption of morals
14 of minor. So the no sex offender
15 treatment would seem to derive from
16 that.

17 Q. Correct. The fact that Mr.
18 DeFoy had this prior conviction, which
19 was actually the reason why his parole
20 was revoked?

21 A. Actually, a subsequent
22 conviction, yes.

23 Q. Correct. Which was a sex
24 offense?

25 A. Yes.

1 Q. And the fact that he did not
2 participate in the sex offender
3 treatment program would have been a
4 reason not to follow the recommendation
5 of the guideline decision-making form?

6 A. As best I can tell from this
7 form and without all of the other
8 information that would be available,
9 yes. That's what it looks like.

10 (Petitioner's Exhibit I
11 marked for
12 identification.)

13 BY ATTORNEY PATTON:

14 Q. Petitioner's Exhibit I, which is
15 the review summarization report
16 completed in October 2000, that I
17 believe the parties have already agreed
18 is the summarization report that went
19 along with or was provided to the Board
20 for the October 2000 review.

21 A. Okay.

22 ATTORNEY PATTON:

23 And I apologize, that was
24 not one of the things that we'd
25 agreed to, Scott, that that was

1 the summarization review for
2 2000. It was in the documents
3 that you had provided.

4 BY ATTORNEY PATTON:

5 Q. Based on your review of
6 Petitioner's Exhibit I, the review
7 summarization report, does it appear
8 that that summarization report would
9 dovetail with the parole decision-
10 making guideline forms which is
11 Petitioner's Exhibit H?

12 A. Yes, yes.

13 Q. Okay.

14 A. It has my initials on it from
15 the same date.

16 Q. Okay. And that indicates that
17 the superintendent or warden was
18 recommending that there not be a
19 reparole; correct?

20 A. That's correct.

21 Q. And on the second page of that
22 under mental health evaluation ---

23 A. Uh-huh (yes).

24 Q. --- does that indicate that a
25 mental health evaluation was prepared

1 by the Department of Corrections on May
2 31st of 2000?

3 A. It refers to it, yes.

4 Q. Okay. And did that evaluation
5 conclude that Mr. DeFoy's level of risk
6 to the community appears to be minimal?

7 A. That line is written there, yes.

8 Q. Okay. But then after that, the
9 summarization report states that at
10 present, however, he refuses to
11 complete any treatment program for sex
12 offenders, which was the stipulation
13 established by the Board.

14 Subsequently, he is ineligible for
15 reparole?

16 A. That's what it says, sir. Yes.

17 Q. Okay. And as you said, your
18 initials actually appear on this
19 document?

20 A. Uh-huh (yes).

21 Q. On the same date that the parole
22 decision-making guidelines and
23 Petitioner's Exhibit H is dated?

24 A. Uh-huh (yes).

25 Q. So would that indicate that you

1 would have reviewed this form as part
2 of the process?

3 A. Yes. Again, it's a copy, but it
4 certainly looks like I did. And that's
5 a copy of my initials as well.

6 Q. Okay.

7 (Petitioner's Exhibits J
8 and K marked for
9 identification.)

10 BY ATTORNEY PATTON:

11 Q. Petitioner's Exhibit J.

12 ATTORNEY PATTON:

13 Scott, this came out of
14 the parole file.

15 A. Okay.

16 BY ATTORNEY PATTON:

17 Q. And Petitioner's Exhibit K,
18 which I believe was a DC-13A form that
19 also has your initials, or a copy of
20 that form with your initials on the
21 front page?

22 A. Yes.

23 Q. Also with the date of October
24 24th of 2000?

25 A. Yes.

1 Q. And I believe the DC-13A form is
2 a form that you had referred to earlier
3 as one of the forms that the Department
4 of Corrections forwards on to the
5 Parole Board containing information
6 about the inmate who is being
7 considered for reparole and containing
8 the recommendations of the Department
9 of Corrections?

10 A. Yes. And, of course, for those
11 who are being considered for parole as
12 well, yes. It's not just for reparole.

13 Q. Right. Is it accurate to say
14 that both Petitioner's Exhibit ---
15 well, let me back up.

16 Is Petitioner's Exhibit J a
17 letter from John McCullough, who was at
18 the time the superintendent of SCI-
19 Houtzdale?

20 A. That's correct.

21 Q. Conveying his actual
22 recommendation for that Mr. DeFoy not
23 be reparoled when you were considering
24 his reparole on October 24th of 2000?

25 A. Yes. That's what it appears to

1 be, sir.

2 Q. Is it accurate to say that both
3 Exhibit J and K indicate that the basis
4 for the Department of Corrections not
5 supporting Mr. DeFoy's parole is the
6 fact that he had not completed the sex
7 offender treatment program?

8 A. Yes, but at least in reading
9 this, if you look at page two of K, it
10 says that he's earned very good housing
11 work reports and has consistently done
12 this since his transfer to Houtzdale.
13 However, there has been no program
14 involvement since his last review.
15 That's kind of vague. The next page,
16 of course, speaks about his refusal to
17 participate in sex offender treatment.
18 And the superintendent's letter
19 specifically names the sex offender
20 treatment. So I don't know --- it's
21 clear that there was no sex offender
22 treatment. I'm not sure if there were
23 other programs he was supposed to do
24 that they didn't address. That I can't
25 answer.

1 The report from Mr.
2 Kechison, who is the corrections
3 counselor, says there has been no
4 program involvement since his last
5 review. So there could be other
6 programs, but I don't have enough
7 information to know that for sure.

8 Q. Okay. But in Warden --- excuse
9 me, Superintendent, I should say,
10 McCullough's letter, he specifically
11 references that it's the lack of
12 participation in sex offender treatment
13 programming that is causing the ---

14 A. That's correct.

15 Q. --- Department of Corrections to
16 recommend that Mr. DeFoy not be
17 reparoled?

18 A. That's what the Exhibit J says.
19 Yes, sir.

20 Q. And so the fact that in 2000,
21 when Mr. DeFoy was being considered for
22 reparole, the fact that even though the
23 parole decision guideline making forms
24 recommended parole or reparole, excuse
25 me, but that Mr. DeFoy was not

1 reparaoled, does it appear that the
2 reason that he was not reparaoled is
3 because he did not participate in the
4 sex offender treatment program?

5 A. If I'm looking at Exhibit H ---?

6 Q. Yes.

7 A. Page seven, the reason for the
8 Board decision not does specifically
9 state that. I don't have enough
10 information to answer this one
11 definitely. I'm sure that that was a
12 factor in the decision not to parole
13 him.

14 Q. Was there anything contained in
15 Petitioner's Exhibit H that would
16 indicate that there was some reason
17 other than Mr. DeFoy's failure to
18 participate in the sex offender
19 treatment program that would have
20 negatively impacted his opportunity to
21 be reparaoled?

22 A. Again, not perhaps specifically
23 in Exhibit H, except it does say the
24 DOC does not support, which of course
25 is the Department of Corrections. And

1 then looking at K, recommendations
2 then, you look at the two of them and
3 there appears to be a parallel between
4 sex offender treatment and the
5 Department of Correction not
6 supporting. Again, I don't have all
7 the information, but there does appear
8 correlation.

9 Q. And would that ultimate result
10 be then consistent with what we've
11 previously talked about, being that if
12 the Parole Board has recommended that
13 an individual participate in a sex
14 offender treatment program, but that
15 individual does not participate in a
16 sex offender treatment program, that
17 the Board will not parole or reparole
18 that individual?

19 A. It appears to be consistent,
20 sir. Yes.

21 ATTORNEY PATTON:

22 I just want to check a
23 couple things or two.

24 ATTORNEY BRADLEY:

25 Actually, this would

1 probably be a good time to take
2 a break?

3 ATTORNEY PATTON:

4 Okay. Yeah, I think I'm
5 done, but I just want to ---.

6 ATTORNEY BRADLEY:

7 Okay.

8 A. Sure.

9 ATTORNEY PATTON:

10 I'm probably going to
11 come back with a few questions.

12 ATTORNEY BRADLEY:

13 Okay.

14 ATTORNEY PATTON:

15 But let me take care of
16 this.

17 SHORT BREAK TAKEN

18 BY ATTORNEY PATTON:

19 Q. I just have a few more
20 questions.

21 A. Sure.

22 Q. Is it the Department of
23 Corrections that calculates minimum and
24 maximum dates?

25 A. Minimum and maximum dates, as I

1 understand it, initially are done by
2 the Department of Corrections. When
3 there is a reparole, then the Board of
4 Probation and Parole has a piece in
5 that as well. I can speak only in
6 general terms. Again, that is an issue
7 or an area that I don't have expertise
8 in and do not have as part of my job
9 description, so I can only give you an
10 overview.

11 Q. But for a reparole, if, for
12 example, if it's a convicted parole
13 violator who's going to be losing
14 street time, is it the Board that ---
15 somewhere in the Board, they'll
16 calculate the new minimum date based on
17 the amount of back time that's ordered
18 served, and then recalculate the
19 maximum date based on the loss of
20 street time?

21 A. I think as a general rule that
22 would be correct, yes. Again, the
23 specifics I can't speak to.

24 Q. You had mentioned when you were
25 reviewing some of the exhibits that we

1 have been talking about that they're
2 older exhibits and things have changed
3 over the course of time, and some of
4 your duties have changed over the
5 course of time?

6 A. Uh-huh (yes).

7 Q. And that when you were giving
8 your general background, answers to my
9 questions about general background,
10 about what you did, that you were
11 speaking about the way you are
12 operating currently?

13 A. That's correct.

14 Q. With regard to the types of
15 information you would review and the
16 mechanics of getting the file,
17 interviewing a potential inmate, and
18 then making either a vote or a
19 recommendation, has that remained more
20 or less constant in your time with the
21 Board?

22 A. Yes. But there have been
23 changes to the Parole Act during the
24 time that I have been a hearing
25 examiner. By and large, the things

1 that are in Section 19 of the Parole
2 Act, which again are the things that
3 we're required by law to look at before
4 making a decision, have not changed
5 substantially that I can recall.
6 Again, you know, we're going over a
7 nine or ten-year period of time, so
8 there have been a significant number of
9 changes in the parole law, starting at
10 about '94 and '95. So there have been
11 changes all along.

12 Q. Since December of 2000, for
13 offenses that have occurred after
14 December of 2000 that are sexual in
15 nature, an inmate's eligibility for
16 parole can depend upon whether or not
17 they participated in a sex offender
18 treatment program; is that correct?

19 A. I believe so. Yeah, I believe.
20 This is '97, I'm not sure, but I think
21 that's ---.

22 Q. So that, for example, a person
23 who is convicted of committing a rape,
24 for a rape that occurred after December
25 of 2000, for that person to actually be

1 eligible for parole and even be
2 considered, they'd have to participate
3 in the sex offender program; is that
4 correct?

5 A. You know, I can't answer that
6 specifically. I don't know. I don't
7 know.

8 Q. Well, when you're getting, for
9 example, with people you're
10 interviewing currently, if they have a
11 sex offense, if they're serving time on
12 a sex offense, is there any information
13 given to you with regard to whether or
14 not their offense occurred at such a
15 point in time that they are required to
16 do sex offender treatment program to be
17 eligible for parole, versus this is
18 somebody whose offense occurred at a
19 point in time where they're still
20 eligible?

21 A. What happens is as a general
22 rule, we have a copy of the police
23 criminal complaint and Affidavit of
24 Probable Cause, hopefully both. And
25 that usually establishes the date of

1 the offense.

2 Q. Okay. So that's something you
3 as a hearing examiner will have to look
4 for in your review of the Board file in
5 preparing for your interview?

6 A. That's correct.

7 Q. And if you are reviewing a file
8 and see that the offense occurred after
9 December of 2000, and if you then look
10 and see, say this person hasn't
11 completed sex offender treatment, do
12 you even go ahead with an interview?

13 A. Again, that would be the
14 determination that would be made before
15 it got to me. Okay?

16 Q. Okay.

17 A. Because I believe the law, that
18 particular law, sets up certain people
19 for whom the law applies and certain
20 people for whom it doesn't. And for
21 those for whom it applies, if they
22 don't have sex offender treatment,
23 they're actually not eligible for
24 parole. We should not see them.

25 Q. Okay. So you should never have

1 to make that determination?

2 A. I should not have to make that
3 determination. That's correct.

4 Q. Someone else should have done
5 that?

6 A. Yes, yes.

7 Q. Okay.

8 ATTORNEY PATTON:

9 Those are my questions.

10 Thank you.

11 A. Sure.

12 EXAMINATION

13 BY ATTORNEY BRADLEY:

14 Q. Just to follow up and be clear
15 on that, you wouldn't interview anybody
16 that's not eligible for parole?

17 A. That's right. Yes.

18 Q. So if they're not eligible for
19 parole because of a failure to
20 participate in sex offender treatment
21 that's mandated by statute, then you
22 would never interview that person?

23 A. That's the way it's supposed to
24 be, yes.

25 Q. Okay. I think you touched upon

1 it, but when you make these decisions,
2 these are individualized decisions; is
3 that correct?

4 A. Yes.

5 Q. You don't apply any blanket
6 rules or considerations when
7 approaching each specific case; do you?

8 A. No. Section 19 is the guiding
9 principle, if you will, the guiding
10 legislation, but each individual is
11 individually reviewed, and we attempt
12 to understand what goes into each
13 individual's makeup and their criminal
14 pattern.

15 Q. And your decision with regard to
16 parole is made based on what you gain
17 from the file and what you gain from
18 the interview?

19 A. That's correct.

20 Q. And in consideration of those
21 factors mandated by statute, and
22 whatever administrative policies and
23 guidelines may apply?

24 A. That's correct.

25 Q. Now, you talked about that you

1 could not recall any instance where
2 somebody had refused to participate in
3 sex offender treatment and had then
4 been paroled. Do you recall that?

5 A. That's correct. I do not recall
6 a single individual, cannot by name or
7 circumstance at this point.

8 Q. But you didn't review any
9 records or documents in making that
10 recollection?

11 A. No, that was a question asked of
12 me cold. So I really can't speak to
13 it. I can't say anything other than
14 what I have.

15 Q. Has anybody ever told you from
16 the Board or the Department of
17 Corrections that under no circumstances
18 are you to ever parole an individual
19 who has refused to participate in sex
20 offender treatment?

21 A. Not that I recall.

22 Q. Now, with regard to your
23 function in recommending or voting for
24 parole, are you essentially making a
25 prediction about an inmate's future

1 behavior once released from custody?

2 A. What I'm doing is assessing his
3 risk to the community.

4 Q. And I guess at best that can
5 only be a prediction as to whether he
6 will not re-offend or he will re-
7 offend? I don't know. Do you
8 understand the question?

9 A. You're asking me is what I'm
10 doing predicting what's going to happen
11 in the future?

12 Q. Yes.

13 A. Is that what you're asking?

14 Q. That's what I'm trying to ask.

15 A. I do not see my role so much as
16 a predictor as an evaluator or
17 assessor. I see my role as important
18 in determining what is this
19 individual's likely risk to the
20 community. And past record is one of
21 the serious things that we look at for
22 that assessment.

23 Q. Within that function, and we can
24 talk generally then specifically, but
25 is generally the prescriptive

1 programming an inmate receives in the
2 institutional setting, is that an
3 important consideration in terms of
4 that evaluation or assessment?

5 A. Yes.

6 Q. Why is that?

7 A. Well, the Department of
8 Corrections generally will have had an
9 individual for a period of months, and
10 often years. So they've had a chance
11 to understand how this individual
12 functions on a day-to-day basis. And
13 they've had a chance to look at many of
14 the same information sources that we
15 do. For example, pre-sentence
16 investigations and that kind of thing.
17 So that they have to make an assessment
18 as well of what this individual's needs
19 are so that they can provide the
20 ability or at least the capacity for
21 rehabilitation if the individual is
22 willing to take that, that possibility
23 of rehabilitation.

24 Q. And does that also apply more
25 specifically in the area of sex

1 offender treatment?

2 A. Yes. And alcohol and drug
3 treatment as well, yes.

4 Q. So that because of that central
5 concern for rehabilitation and as
6 reflected in performance in
7 prescriptive programming, does it then
8 not surprise you that you cannot think
9 of any individual who has not been
10 paroled who has refused to participate
11 in sex offender treatment?

12 A. No, it doesn't surprise me.

13 Q. And I guess just finally to
14 clarify, and I think you touched upon
15 this, but this case involves Robert
16 DeFoy, and, apparently, you were
17 involved in several interviews and
18 parole reviews involving Mr. DeFoy. As
19 we sit here today, do you have any
20 personal recollection of those events
21 back in 1997 and 2000?

22 A. No, I don't.

23 Q. Thanks.

24 ATTORNEY BRADLEY:

25 That's all I have. He

1 may have some follow-up based on
2 those questions.

3 RE-EXAMINATION

4 BY ATTORNEY PATTON:

5 Q. Mr. Bradley asked you some
6 questions about, you know, the
7 prescriptive programming plan.

8 A. Uh-huh (yes).

9 Q. And if an inmate's failure to
10 comply with the prescriptive
11 programming plan would have an impact
12 on the parole decision, your decision,
13 as to recommend parole or reparole.
14 When we were going through, for
15 example, Mr. DeFoy's case, the 1997
16 consideration for reparole, and we
17 determined that the Department of
18 Corrections through Superintendent
19 McCullough actually supported Mr.
20 DeFoy's parole; is that correct?

21 A. I don't recall that I had Mr.
22 McCullough specifically in 1997. It
23 may very well be, but I don't remember
24 ---.

25 Q. Whether it was Mr. McCullough or

1 not, the superintendent recommended
2 release?

3 A. Yes. Yes, that's correct. I
4 don't see the individual's name, but
5 yes, that does appear to be correct.

6 Q. But even though the parole
7 decision-making guidelines forms in
8 1997 supported reparole and the
9 Department of Corrections supported
10 reparole, ultimately Mr. DeFoy --- or
11 you recommended that Mr. DeFoy not be
12 reparaoled based on the fact that he did
13 not complete the sex offender treatment
14 program; correct?

15 A. That and misconduct, I believe.
16 Yeah. And assault of instant offense,
17 the reasons were listed, yes.

18 Q. The other things, okay. With
19 regard to the sex offender treatment
20 program, even if the Department of
21 Corrections was recommending release
22 for an individual who the Board had
23 stated they wanted to have sex offender
24 treatment program, and if the person
25 hadn't done the sex offender treatment

1 program, it would be your experience
2 that that individual would not be
3 released, even though the Department of
4 Corrections may support such release?

5 A. A difficult question again,
6 because if there was an obvious anomaly
7 between what the Department of
8 Corrections says and what the Parole
9 Board had placed in a green sheet, as a
10 decision maker, I would generally want
11 to have more information. And, in
12 fact, that appears --- and, again, I
13 don't remember this case, but that
14 appears to be exactly what happened in
15 this case because I didn't immediately
16 say no. I wanted clarification of
17 status of 7/16/92 conviction. This is
18 Exhibit E, the 1997 guidelines. And
19 below, there's a note, and this looks
20 like my writing. Thankfully, not too
21 many people write like I do.

22 But 8/1/97, received attached
23 York County material, which I don't
24 have. And legal opinion that since the
25 district attorney filed an appeal with

1 the PCRA, the conviction stands until
2 that matter is resolved. So I actually
3 didn't just blanket say no. It
4 actually went another step and asked to
5 find out, was it, in fact, true because
6 if you read through my writing there,
7 he's been granted a new trial on the
8 IDSI, and he has posted bond. So I
9 wanted to find out if indeed that
10 conviction was set aside. Apparently,
11 it wasn't. And at least from Exhibit
12 H, we had some written indication that
13 that, in fact, was still in effect, the
14 detainer sentence in 2000.

15 Q. But once you concluded that the
16 sex offense conviction was still there,
17 that confirmed to you that sex offender
18 treatment program was needed as ordered
19 by the Board?

20 A. Yes.

21 Q. And, therefore, since that
22 treatment was not completed, ---

23 A. Yes.

24 Q. --- you would not recommend
25 reparole even though the guidelines

1 suggested it?

2 A. That's what it appears to be.
3 Again, I don't have the entire file,
4 but that's what it appears to be.

5 Q. Mr. Bradley asked you if you
6 reviewed any particular files in
7 preparing for today, and you had
8 answered that you did not?

9 A. That's correct.

10 Q. Would you know of any way you
11 could try and locate files in a manner
12 that would allow you to say I want to
13 do a comparison of seeing whether or
14 not anyone who had been ordered by the
15 Board to complete sex offender
16 treatment program, but who had not
17 completed the sex offender treatment
18 program were actually ever paroled or
19 reparaoled?

20 A. I don't know that I could
21 personally do that. I mean, I can
22 request a file, a Board file, but that
23 would be unusual. In fact, I've never
24 done that.

25 Q. And based on your testimony,

1 based on your experience, the Board has
2 treated the sex offender treatment
3 program very seriously in the
4 requirement that an inmate do it, and
5 therefore, you cannot recall ever
6 having an inmate who did not complete
7 the program actually be paroled or
8 reparaoled. Does it surprise you that
9 you can't recall of a single instance
10 where that actually occurred?

11 A. Well, it doesn't surprise me
12 that I can't remember it in part
13 because of the volume of work I do, and
14 in part for the fact that I've been at
15 it for ten years.

16 Q. Well, let me put it this way.
17 It would be an extremely rare situation
18 if it has ever occurred, that someone
19 who had been ordered to take a sex
20 offender treatment program but did not
21 were actually paroled or reparaoled;
22 correct?

23 A. I believe so.

24 Q. And, therefore, would that be a
25 situation that would likely stick out

1 to you because it would be so out of
2 the ordinary?

3 A. I'd like to say yes, but again,
4 the volume of work that I do makes it
5 difficult to remember specific cases.
6 The other part of that is I am
7 frequently the first person in the
8 whole process to make a vote or a
9 recommendation. It looks like back in
10 '97, it was a vote. Now, it's a
11 recommendation for yes. There would be
12 people who would follow me. And if
13 this was not a panel decision, if two
14 people or the entire panel are not
15 sitting here, I would not know what
16 happened afterwards, okay. So when I
17 say that I believe it would be
18 extremely rare that's because in my
19 understanding, I've not seen it
20 happened.

21 That does not mean it could not
22 happen. I don't have a way of knowing.
23 There's not a loop whereby everybody
24 says, oh, okay, you did these 15
25 people. We want you to know this guy

1 was paroled, this one wasn't, da, da,
2 da, da. So I can't blanket say it
3 hasn't happen. To my knowledge, it
4 hasn't, but, again, my knowledge is
5 very narrowed. I am a worker, not a
6 policy maker. Okay?

7 Q. Uh-huh (yes).

8 A. And I'm not the person that
9 follows. That's the Board itself that
10 would look at those kinds of
11 statistics. I would have no reason or
12 truthfully ability to do it.

13 Q. But you don't recall ever voting
14 yourself to recommend parole or
15 reparole for someone who hadn't done
16 sex offender treatment having been
17 previously ordered to do that by the
18 Board?

19 A. I cannot give you a specific
20 name or a specific instance. Again, as
21 I had indicated, you're sitting in a
22 prison hospital. I could see a
23 possibility when it could happen, but I
24 cannot say that I have done that. I
25 cannot remember ever doing that. No,

1 sir.

2 ATTORNEY PATTON:

3 Thanks.

4 ATTORNEY BRADLEY:

5 Thank you. Did you want
6 to review the transcript before
7 we certify it?

8 A. I don't know.

9 ATTORNEY BRADLEY:

10 If you're confident that
11 the Court Reporter truthfully
12 and accurately took everything
13 down, then you can waive the
14 reading.

15 A. I'll waive the reading.

16 * * * * *

17 DEPOSITION CONCLUDED AT 10:27 A.M.

18 * * * * *

19

20

21

22

23

24

25

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF CAMBRIA)

C E R T I F I C A T E

I, Melissa Beam, a Notary Public in and for
the Commonwealth of Pennsylvania, do hereby
certify:

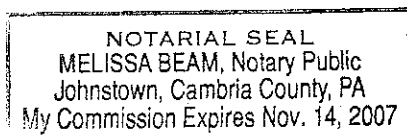
That the witness whose testimony appears in
the foregoing deposition, was duly sworn by me on
said date and that the transcribed deposition of
said witness is a true record of the testimony
given by said witness;

That the proceeding is herein recorded fully
and accurately;

That I am neither attorney nor counsel for,
nor related to any of the parties to the action in
which these depositions were taken, and further
that I am not a relative of any attorney or
counsel employed by the parties hereto, or
financially interested in this action.

Melissa Beam, CCR

Melissa Beam, Reporter



•PITTSBURGH, PA

•CLEARFIELD, PA

•STATE COLLEGE, PA

•HOLLIDAYSBURG, PA

•ERIE, PA

•OIL CITY, PA

•HARRISBURG, PA

**SARGENT'S
COURT REPORTING
SERVICE, INC.**

210 Main Street
Johnstown, PA 15901
(814) 536-8908

•INDIANA, PA

•GREENSBURG, PA

•PHILADELPHIA, PA

•SOMERSET, PA

•WILKES-BARRE, PA

•CHARLESTON, WV

Page

Line

210 MAIN STREET
JOHNSTOWN, PA 15901
(814) 536-8908

PHILADELPHIA, PA
WILKES-BARRE, PA
OIL CITY, PA
SOMERSET, PA
CLEARFIELD, PA
CHARLESTON, WV

**COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE**

DATE: 120992

CLIENT NAME: ROBERT DEFOY

PAROLE NO: 1226J

INSTITUTION: YORK COUNTY PRISON
SCI - HUNTINGDON CASE

INSTITUTION NO: AK1017

AS RECORDED ON 111092 THE BOARD OF PROBATION AND PAROLE RENDERED THE
FOLLOWING DECISION IN YOUR CASE:

RECOMMIT AS A CPV TO A STATE CORRECTIONAL INSTITUTION WHEN AVAILABLE TO SERVE
40 MONTHS BACKTIME.

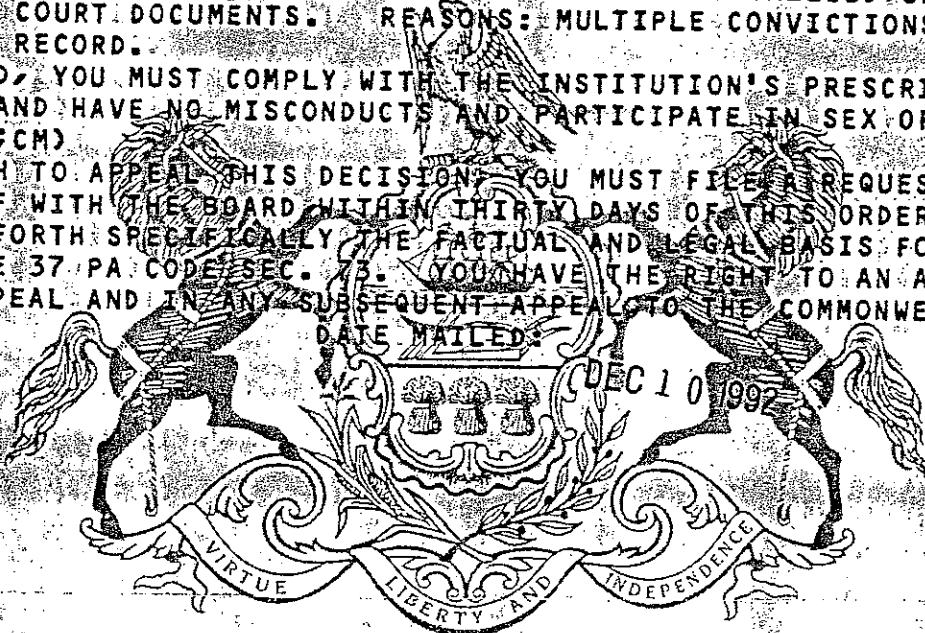
40 MONTHS FOR THE OFFENSES OF INVOLUNTARY DEVIATE SEXUAL INTERCOURSE,
STATUTORY RAPE AND CORRUPTION OF MINORS. EVIDENCE RELIED UPON: PROOF OF
CONVICTIONS - COURT DOCUMENTS. REASONS: MULTIPLE CONVICTIONS ESTABLISHED
IN A COURT OF RECORD.

WHILE CONFINED, YOU MUST COMPLY WITH THE INSTITUTION'S PRESCRIPTIVE PROGRAM
REQUIREMENTS AND HAVE NO MISCONDUCTS AND PARTICIPATE IN SEX OFFENDER TREATMENT.
(H.R. 10-6-92;CM)

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST FILE A REQUEST FOR ADMINISTRA-
TIVE RELIEF WITH THE BOARD WITHIN THIRTY DAYS OF THIS ORDER. THIS REQUEST
SHALL SET FORTH SPECIFICALLY THE FACTUAL AND LEGAL BASIS FOR THE ALLEGA-
TIONS. SEE 37 PA CODE SEC. 75. YOU HAVE THE RIGHT TO AN ATTORNEY
IN THIS APPEAL AND IN ANY SUBSEQUENT APPEAL TO THE COMMONWEALTH COURT.

DATE MAILED:

DEC 10 1992



CC: PUBLIC DEFENDER
CC: SUB OFFICE - YORK
CC: SUPV

James W. Riggs

JAMES W. RIGGS
BOARD SECRETARY

CLIENT COPY
ROBERT DEFOY
YORK COUNTY PRISON
1155 WILLIAMS ROAD
YORK PA

AK1017

PETITIONER'S
EXHIBIT
A

COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE

DATE: 110593

SENT NAME: ROBERT DEFOY

PAROLE NO: 1226J

INSTITUTION: STATE CORRECTIONAL INSTITUTION CAMP HILL

INSTITUTION NO: AK1017

AS RECORDED ON 110593 THE BOARD OF PROBATION AND PAROLE RENDERED THE
FOLLOWING DECISION IN YOUR CASE:

REFER TO BOARD ACTION OF 11/10/92 TO RECOMMIT TO A STATE CORRECTIONAL
INSTITUTION AS A CONVICTED PAROLE VIOLATOR TO SERVE 40 MONTHS ON BACKTIME.

REPAROLE 03/25/93 TO STATE DETAINER SENTENCE,
UPON CONDITION THERE ARE NO MISCONDUCTS AND YOU REMAIN INVOLVED IN
REQUIRED PROGRAMS.

MUST ABIDE BY THE RULES AND REGULATIONS OF THE INSTITUTION. FAILURE TO DO SO
MAY RESULT IN PAROLE REVOCATION.

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST FILE A REQUEST FOR ADMINISTRA-
TIVE RELIEF WITH THE BOARD WITHIN THIRTY DAYS OF THIS ORDER. THIS REQUEST
SHALL SET FORTH SPECIFICALLY THE FACTUAL AND LEGAL BASIS FOR THE ALLEGA-
TIONS. SEE 37 PA CODE SEC. 73. YOU HAVE THE RIGHT TO AN ATTORNEY
IN THIS APPEAL AND IN ANY SUBSEQUENT APPEAL TO THE COMMONWEALTH COURT.

DATE MAILED: NOV 17 1993

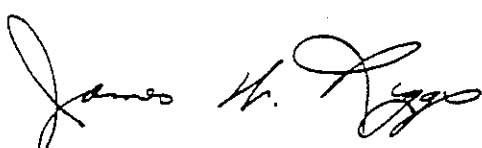
(CAM 11/05/93)

PAROLE VIOLATION MAX DATE: 050701

ESD.
CONTROL COPY

FILE COPY

PETITIONER'S
EXHIBIT
B


JAMES W. RIGGS
BOARD SECRETARY

15

COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE

DATE: 112393

AGENT NAME: ROBERT DEFOY

PAROLE NO: 1226J

INSTITUTION: STATE CORRECTIONAL INSTITUTION HUNTINGDON

INSTITUTION NO: AK1017

AS RECORDED ON 112393 THE BOARD OF PROBATION AND PAROLE RENDERED THE
FOLLOWING DECISION IN YOUR CASE:

MODIFY BOARD ACTION OF 11/05/93 BY CORRECTING REPAROLE DATE TO 03/25/97.

REST OF BOARD ACTION REMAINS THE SAME.

IF YOU WISH TO APPEAL THIS DECISION, YOU MUST FILE A REQUEST FOR ADMINISTRA-
TIVE RELIEF WITH THE BOARD WITHIN THIRTY DAYS OF THIS ORDER. THIS REQUEST
SHALL SET FORTH SPECIFICALLY THE FACTUAL AND LEGAL BASIS FOR THE ALLEGA-
TIONS. SEE 37 PA CODE SEC. 73. YOU HAVE THE RIGHT TO AN ATTORNEY
IN THIS APPEAL AND IN ANY SUBSEQUENT APPEAL TO THE COMMONWEALTH COURT.

DATE MAILED: DEC 01 1993

(CAM 11/23/93)

PAROLE VIOLATION MAX DATE: 060701

ESQ.
CONTROL COPY

FILE COPY

PETITIONER'S
EXHIBIT
C

James W. Riggs
JAMES W. RIGGS
BOARD SECRETARY

16

COMMONWEALTH OF PENNSYLVANIA
PENNA. BOARD OF PROBATION AND PAROLE

DATE: 042397

CLIENT NAME: ROBERT DEFOY

PAROLE NO. 1226J

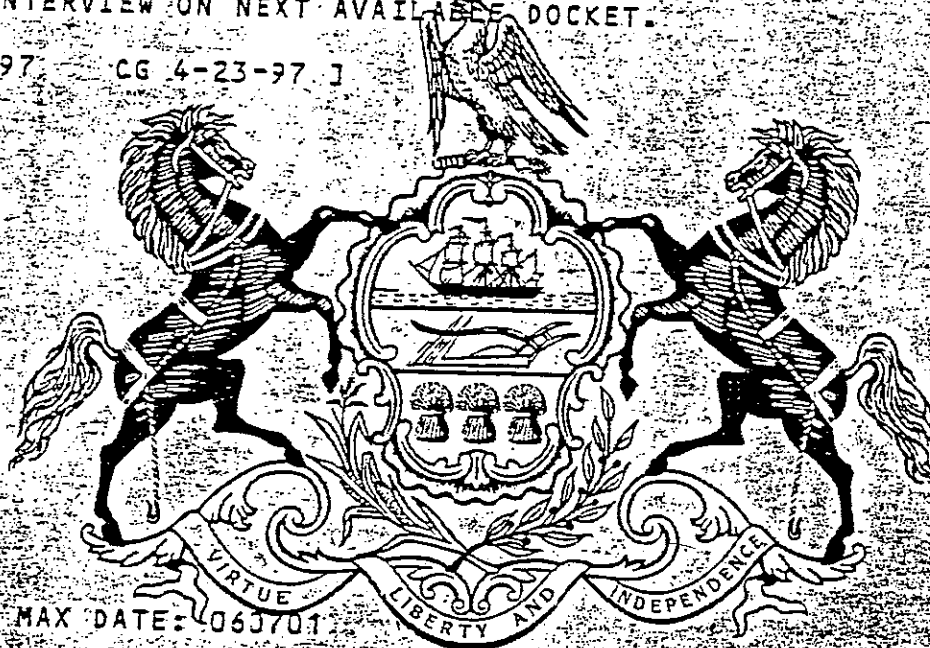
INSTITUTION: SCI - HOUTZDALE

INSTITUTION NO. AK1017

AS RECORDED ON 042297 THE BOARD OF PROBATION AND PAROLE RENDERED THE
FOLLOWING DECISION IN YOUR CASE:MODIFY BOARD ACTION OF 11-23-93 AND 11-05-93 BY TEMPORARILY RESCINDING
THE REPAROLE PORTION DUE TO MISCONDUCTS AND NOW:

LIST FOR REINTERVIEW ON NEXT AVAILABLE DOCKET.

MEMO 04-10-97 CG 4-23-97]



PAROLE VIOLATION MAX DATE: 060701

FILE COPY

PETITIONER'S
EXHIBIT

D


W. CONWAY BUSHEY
BOARD SECRETARY

mm3m

PBPP-361 (9/90)

PENNSYLVANIA BOARD OF PROBATION AND PAROLE

CLIENT NAME ROBERT DA FOLY PAROLE NUMBER 1226-V
 DATE OF INTERVIEW 6/19/97 INSTITUTION Stateville/AL-10;

PAROLE DECISION MAKING GUIDELINES**I PAROLE PROGNOSIS ASSESSMENT***Reparole Review*

INSTRUCTIONS: Information on age-at-minimum-sentence, prior convictions, PPA offense code and prior probation or parole revocations should be provided in column 1. The appropriate risk classification score in column 2 should be placed in column 3 and subsequently added together in the total PPA score box. Based upon the total score number, the client may then be classified into a risk category according to the range of scores shown at the bottom of the instrument. Clients with multiple offenses should have each offense ranked in ascending score order according to the offense ranking at the bottom of the page. This process results in a risk assessment which is sensitive to potential future crime. Column 4 may be used to reassess a case if the interview suggests that the assessment information was incorrect.

COLUMN 1 Variable	COLUMN 2 Score Allocation for Risk Assessment	COLUMN 3 Classification Score	COLUMN 4 Reassessment
Age at Minimum: <u>30</u> yr. Minimum Sentence Date <u>9/28/92</u>	0 if 40 years or older 21 if 26-39 years 38 if 25 years or younger	<u>21</u> 0	
Prior Convictions: Number: <u>1</u>	0 if no prior convictions 9 if 1 or 2 convictions 26 if 3 or more convictions	<u>9</u> 9	
PPA Offense (Ranked According to Index) 1. <u>Robbery w/ Acc.</u> 2. <u>Aggravated Assault</u> 3. <u>Sex Offense</u> 4. _____ 5. _____	0 if not elsewhere classified 20 if theft, fraud, burglary or robbery	<u>20</u> (20)	
Probation Revocations <u>0</u> Parole Revocations <u>1</u> Total: <u>1</u>	0 if none 16 if 1 or more	<u>16</u> (16)	
TOTAL P.P.A. SCORE		<u>57</u> 45	

Parole Prognosis Assessment Score Category CHECK ONE: 71-100 High Risk ☐ 45-70 Medium Risk ☒ 0-44 Low Risk ☐

Instant Offense in descending recidivism rank order: 1) Theft/Fraud, 2) Burglary, 3) Robbery, 4) Aggravated Assault, 5) Drug Law Violation, 6) Arson & Miscellaneous, 7) Simple Assault & Kidnapping; 8) Sex Offenses, 9) Manslaughter, 10) Murder.

II POTENTIAL ASSAULTIVENESS/DANGEROUSNESS SCREEN

Assaultiveness is a course of conduct that presents, or is calculated to present, a danger or perceived danger to any person. An assaultive instant offense is defined as any single conviction offense for the current sentence of the following type: murder, manslaughter, rape, and other assaultive sex offenses, robbery, kidnapping, aggravated or simple assault, arson against persons, weapon law violations, or homicide by vehicle.

Official versions or facts of crime are required for all offenses in the definition above prior to a final Board action.

- Does the client have an assaultive instant offense based upon the definition above, or based upon the official version of the offense in the case of a plea bargain? ☒ YES ☐ NO
If the answer to the above question is "yes", mark a score of (1) on p. 2, III(7), and answer the following question.
If the answer to the above question is "no", stop here.
- Does the client have a mental health problem which requires treatment in the form of either individual or group therapy/counseling and/or psychotropic medication? (Rape and all other assaultive sex offenses require a "yes" answer). ☒ YES ☐ NO
If the answer to the above question is "yes", mark the client as having a very high assault potential with a score of (3) on p. 2, III(8) and stop here.
If the answer to #2 is "no", answer the following question:
- Did the client have any institutional problems/misconducts which were assaultive in nature within the last 12 months or the last one-half of the minimum sentence, whichever is longer? ☐ YES ☐ NO
If the answer to the above question is "yes", mark it

ssault potential with a score of (2) on p. 2, III(9).

PETITIONER'S
EXHIBIT

E

III PAROLE CONSIDERATION FACTORS

Each unfavorable factor listed below is a possible reason for refusing parole as a matter of policy. Select the appropriate column from the PPA on p. 1. If the response to a specific unfavorable factor is in the affirmative, the appropriate score of 2 or 1 must be entered. If the response is in the negative, a 0 goes in the blank space provided. Enter the total score of unfavorable factors at the bottom of the appropriate column.

REASONS FOR PAROLE REFUSAL		PAROLE PROGNOSIS ASSESSMENT		
		High Risk	Medium Risk	Low Risk
Unfavorable Factors from Institutional Performance:				
1) Three or more Class II misconducts, or two Class II and one Class I misconducts, during the last twelve (12) months or the last one-half of the minimum sentence, whichever is longer.	1	_____	<u>0</u>	_____
2) Two or more Class I misconducts during the last twelve (12) months, or the last one-half of the minimum sentence, whichever is longer.	1	_____	<u>0</u>	_____
3) Open charges* for new crimes, or new convictions, while serving this prison sentence.	2	_____	<u>0</u>	_____
4) Removed from CSC, work release or prerelease for cause. *(prima facie case was established.)	2	_____	<u>2</u>	_____
Unfavorable Factors from Prior Record:				
5) Substance Abuse	2	_____	<u>0</u>	<u>0</u>
6) Habitual Offender	1	_____	<u>0</u>	<u>0</u>
Unfavorable Factors from Instant Offense:				
7) Assaultive Instant Offense (from page 1, II (i))	1	_____	<u>1</u>	<u>1</u>
8) Very high assaultive behavior potential (from page 1, II (2))	3	_____	<u>0</u>	_____
9) High assaultive behavior potential (from page 1, II (3))	2	_____	<u>0</u>	<u>2</u>
10) Victim Injury	1	_____	<u>0</u>	_____
11) Client had weapon in the commission of offense. <input checked="" type="checkbox"/> Firearm <input type="checkbox"/> Knife <input type="checkbox"/> Other	1	_____	<u>1</u>	_____
TOTAL UNFAVORABLE FACTOR SCORE			<u>4</u>	<u>4</u>
Parole Policy Guideline Recommends Refuse if Total Score is:		5 or more	6 or more	7 or more

Guideline Policy Recommendation: Parole ☒ Refuse ☐

DEFINITIONS:

- Open Charges** - This refers to new criminal charges being filed while on pre-release or as a result of criminal conduct at a correctional facility. If open charges are to be accepted as a basis for parole refusal, a prima facie case must have been established.
- Substance Abuse** - There is a record of substance abuse which lead to police arrests and/or clinical determinations.
- Habitual Offender** - This refers to a person who has a total of three or more prior convictions for similar types of offenses in his criminal history. For example, they may be convictions for burglary and robbery, or for drug law violations. Also, a person is included who simply appears to have developed a criminal life style based upon four or more convictions which may be dissimilar. A corollary concept refers to a person in syndicated or organized crime.
- Victim Injury** - The official version of the offense must indicate physical injury to the victim of the crime, however slight. In cases of sexually assaultive behavior, psychological injury to the victim is also frequently the case; therefore, in all cases of sexual assault an unfavorable factor score of 1 is to be entered.
- Weapon** - The official version of the offense must place the client in actual or constructive possession of a weapon. The definition of weapon contained in Board regulations states: "Anything readily capable of causing harm to or intimidating another, possessed under circumstances not manifestly appropriate for any lawful use that the object may have". In a crime such as "homicide by vehicle", the vehicle would not be a weapon under the above definition unless: 1) there was a DUI involved, or; 2) there was a clear intent to harm the victim by using the vehicle as a weapon. Under both exceptions, the circumstances were not manifestly appropriate for any lawful use according to our definition.

IV. COUNTERVAILING FACTORS TO EXPLICIT POLICY OF PAROLE DECISION MAKING GUIDELINES**A. Factors Countervailing a Guideline Recommendation to Refuse Parole:**

GENERAL POLICY: Where factors of risk have been reduced by participation in available institutional programming, the quantity and quality of program participation should correspond to the level of risk involved to be a meaningful countervailing to a parole guideline recommendation to refuse. Where available prison programming could reduce the risk of parole failure, it will be prescribed by the Board as a necessary program to assure release.

		YES	NO
1. Inventory of Institutional Programming		<input type="checkbox"/>	<input type="checkbox"/>
a. Was there positive response to prescriptive or other prison program plans?			
Program 1)	Benefit 1)		
Program 2)	Benefit 2)		
Program 3)	Benefit 3)		

2. Do other factors support a parole action? (For example, recommendations by the Department of Corrections, Board staff, strength of parole plan) _____
- _____
- _____

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

B. Factors Countervailing a Guideline Recommendation to Parole:

GENERAL POLICY: The parole guidelines provide a uniform method for assessing parole suitability and risk. In some instances, guideline assessments may indicate medium or low risk; however, other risk factors may contravene and suggest that the likelihood of successful reintegration is low while the threat to the safety of the community is high. The factors listed represent risks outside of the parole guideline for which a parole refusal may be justified.

	YES	NO
1. The client displayed psychotic or clearly dangerous behavioral characteristics during the parole interview.	<input type="checkbox"/>	<input type="checkbox"/>
2. The client had a recent psychiatric/psychological report which causes concern.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. There were strong objections from the sentencing judge, the district attorney, or the victim of the crime.	<input type="checkbox"/>	<input type="checkbox"/>
4. The client is a habitual offender for assaultive crimes.	<input type="checkbox"/>	<input type="checkbox"/>
5. There is an unfavorable recommendation from the Department of Corrections or Board Staff.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. There are other factors supporting a parole refusal:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

_____ *refuses S.O.T.*

_____ *negative attitude*

Instructions: The countervailing factors to a guideline recommendation to refuse parole (A) or to parole (B) are for information to the decision-makers only. Countervailing factors checked in (B) are **not** to be communicated in the Board action as such. The Board Member/Hearing Examiner will supply the appropriate reasons for refusal in his/her decisions in section VII of this guideline document.

V FINAL DECISION MAKING ANALYSIS

Decision Outcome and Guideline Consistency: Use the appropriate guideline recommendation column to check off the interviewer decision.

Instructions: Inmates refused parole may be eligible for the Special Early Release Program. If eligible, indicate a parole action in item 2 below and check the box titled SERP. The initial and date space on this page is to be completed for a "continue" decision only. Final decisions are initiated on page 6 of this document when there is no "continue" action preceeding it. If the case has been continued, for whatever reason, the final decision can be initiated on this page with the appropriate completion of section VI or VII, whichever is appropriate to the decision.

	BOARD DECISION	Guideline Recommendation	
		Parole	Refuse
Initial & Date <u>DK/OK</u> <u>6/19/97</u>	1) Continue: a) to approved plan	<input type="checkbox"/>	<input type="checkbox"/>
	b) pending receipt of information (Specify) <u>CLARIFICATION OF STATUS OF 7/16/92 CONVICTION</u> <u>(1 DSI, CMM, STATE RAMP)</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	c) pending successful adjustment to C.S.C., review in _____	<input type="checkbox"/>	<input type="checkbox"/>
	d) pending disposition of criminal charges	<input type="checkbox"/>	<input type="checkbox"/>
	2) Parole to Approved Plan <input type="checkbox"/> SERP	<input type="checkbox"/>	<input type="checkbox"/>
	3) Parole to in-patient program; approved home to be available	<input type="checkbox"/>	<input type="checkbox"/>
	4) Parole to Detainers: <input type="checkbox"/> To Board/backtime detainer sentence only; <input type="checkbox"/> to State Sentence; approved home to be available prior to release to the community. <input type="checkbox"/> while confined must participate in _____ <input type="checkbox"/> To other detainer sentence; approved home to be available: Check one: <input type="checkbox"/> County <input type="checkbox"/> Sentence <input type="checkbox"/> Untried Case <input type="checkbox"/> Other State (approved home necessary if untried case) <input type="checkbox"/> Federal <input type="checkbox"/> Sentence <input type="checkbox"/> Untried Case <input type="checkbox"/> Violation of Probation Parole <input type="checkbox"/> Immigration and Naturalization <input type="checkbox"/> When released to the community, special conditions as prescribed imposed. <input type="checkbox"/> Other: _____	<input type="checkbox"/>	<input type="checkbox"/>
	5) Refuse Parole	<input checked="" type="checkbox"/> <u>8/1/97</u>	<input type="checkbox"/>

NOTES:

"It was just a regular stickup"
Aged 45; original sentence is 10-20 yr for robbery; ret. as CPV for rape of step daughter (had 6 1/2-13 yr. sent. to serve); Bd. act of 11/23/93 was to reparole to 3/25/97; rec'd Chaz T misconduct (refusing an order) and has been granted new trial on the DSI, etc (he has posted bond); Bd act of 4/22/97 rebated inmate for interview; previous CCC failure (drugs); also previously returned for possessing sword? loaded .22 in high home; since CPV return has completed Stress/Anger; refused S.O.P. (says not guilty, so won't take it); if paroled, live w/wife look for work (P.P. approval 5/15/97). inmate says he "thinks" he has posted bond - via property bond - but he's not "sure" the D.A. (?) effected the bond.
NOTE: 8/1/97. Rec'd attached York Co. warrant - and legal opinion that since DA filed a removal of PCRA the conviction stands until that matter is resolved.

VI SPECIAL CONDITIONS OF PAROLE**YES NO**

1. Are special conditions of parole necessary? ☐ ☐
2. Did the inmate raise objections to any special condition? ☐ ☐
3. What is the presenting problem to adjustment, or danger to the community? _____

4. Complete if special conditions of parole are necessary:

____ Prior to release to an in-patient program, you will be required to sign the appropriate release form for confidential information.

____ Removal or termination from the in-patient program for any reason other than successful completion is a violation of your parole.

WHEN PAROLED OR AFTER SUCCESSFUL COMPLETION OF THE IN-PATIENT PROGRAM, YOU MUST COMPLY WITH THE FOLLOWING SPECIAL CONDITIONS OF PAROLE:

- ____ You must abide by all of the supervision requirements in the Special Early Release Program
- ____ Out-patient (drug/alcohol/sex offender/mental health/other: _____) treatment [circle] is a special condition of your parole supervision until the treatment source and/or parole supervision staff determine it is no longer necessary. You will be required to sign the appropriate release form for confidential information.
- ____ You must cooperate with TASC-SCI and follow all treatment recommendations.
- ____ Upon your release on parole, you will be evaluated to determine your need for (drug/alcohol/mental health/other: _____) treatment [circle]. Prior to the evaluation being conducted, you will be required to sign the appropriate release form for confidential information. If the evaluation reveals that treatment is indicated, this special condition of parole will be amended to include other appropriate special conditions imposed by your parole agent.
- ____ You must submit to (urinalysis testing/mandatory urinalysis testing) [circle]
- ____ You must achieve negative results in screening tests randomly applied for the detection of the presence of controlled substances or designer drugs and you must pay for the costs of the tests. (Act 97 - _____)
- ____ You must not consume alcohol under any conditions or for any reason
- ____ You must not enter establishments that sell or dispense alcohol
- ____ You must not contact or associate with persons who sell drugs, or with drug users, outside of a treatment setting.
- ____ You must take psychotropic medication if prescribed by your doctor
- ____ You must support your dependents
- ____ You must not contact or associate with _____ for any reason
- ____ You must maintain (employment/vocational training/educational training/other/ _____) [circle] as approved by parole supervision staff.
- ____ You must engage in an active job search during any period of unemployment, and provide verification as directed by parole supervision staff.
- ____ Other: _____

SPECIAL INSTRUCTIONS TO PAROLE SUPERVISION STAFF

VII REASON FOR PAROLE REFUSAL AND REVIEW DATE**1) Reasons for refusal:**

- 7 a) factors cited in guidelines section(s) III, 4, 7, , , ,
- b) negative interest in parole
- c) your need for: (check the appropriate need)
- ☐ counseling ☐ education
- ☐ treatment ☐ vocational training
- 7 d) failure to participate in and benefit from a treatment program for:
- ☒ sex offenders ☐ mental health problems
- ☐ substance abuse ☐ other: _____
- e) unfavorable recommendation from the:
- ☐ district attorney ☐ warden of county prison
- ☐ sentencing judge ☐ Department of Corrections
- X f) other: MISCONDUCT

2) Review date and conditions for release consideration:

- X a) review in JUNE 1998 for tentative _____ release
- Mo./Yr. Mo./Yr.
- 7 b) must participate in P.P.P. INCLUDING S.O.T.
- 7 c) you must maintain a clear conduct record and MAINTAIN an institutional recommendation for parole.
- d) review in _____, or earlier, if recommended by the Department of Corrections because of demonstrable benefit from participation in an appropriate treatment program for:
- ☐ sex offenders ☐ mental health problems
- ☐ substance abuse ☐ other: _____
- e) serve your unexpired maximum sentence _____/_____/_____
- f) parole to an approved plan upon condition that there are no misconducts, effective _____ and subject to the following special conditions (see page 5)

VIII PANEL MEMBER CONCURRENCE

- 1) Interviewing Panel Member DR Cook Date 8, 1, 97
- Deborah R Cook AUGUST 1, 1997
- 2) Board/Panel Member Deborah R Cook Date 8, 12, 97 Agree ☒ Disagree ☐
- Explain Disagreement: _____
- 3) Board/Panel Member _____ Date _____/_____/_____ Agree ☐ Disagree ☐
- Explain Disagreement: _____

Instruction: Agreement or Disagreement references position relative to the preceding response.

IX SPECIAL CONDITIONS OF PAROLE AND THE PAROLE PLAN

GENERAL POLICY: The parole plan is a contract which provides the public some assurance that their community will be protected while the means to reintegrate the offender are implemented. The plan is judged therefore in context of the client's P.P.A. and unfavorable factors which suggest risk to the community. The higher risk client requires more stringent criteria when the plan is viewed as a countervailing to risk. Discretion for approval of a parole plan is a field staff prerogative unless the Board has specific cause to intervene. Where an approved plan is not available, specific approval criteria commensurate with assessed risk will be set by the Board as special conditions of parole.

A. PAROLE PLAN CHECK LIST

1. Does the client have a detainer sentence?

YES ☒ NO ☐

Type: ☐ State ☐ Board ☐ County ☐ Federal ☒ Untried Case ☐ Immigration and Naturalization
☐ Violation of Probation or Parole ☐ Other

2. The client made some effort to prepare a parole plan.

YES ☒ NO ☐

3. The client submitted a completed parole plan to the IPR: Date

YES ☐ NO ☐

4. The IPR sent the parole plan for a field investigation: Date

YES ☒ NO ☐

5. There were field investigation responses received for:

a) Residence

YES ☒ NO ☐

b) Employment/Education/Training

YES ☐ NO ☐

6. Was a parole plan accepted as adequate by field staff: Date

YES ☒ NO ☐

PBPP-382 (4/87)

Interview Month JUNE 1997

SUMMARIZATION REPORT

Inst/Docket No. SCI-HD #56

Name Robert DeFoy Inst and No. SCI-Houtzdale, AK-1017 Parole No. 1226-J

Minimum

Review ☒

(Reparole)

OFFICIAL VERSION (See Attached)

PBPP 139

DC-1B

PBPP-30

PSI

Others (Indicate) ☒ None available

RESIDENT'S VERSION

DC-1B

PBPP-130

PSI

Subject Interview

PRIOR ADULT RECORD Number of: Source PSP Rap Sheet

Convictions 1

Confinements 1

Probation Revocations 0

Parole Revocations 1

ADDITIONAL INFORMATION (See attached report)

Psychiatric

Psychological ☒

Medical

Misconducts ☒ 11/6/96

Source 6/16/97

Fines, Costs, Restitution

Unlisted

Amount

PROBLEM AREAS

Assaultive ☒

Sexual ☒

Vocational

Alcohol

Psychiatric/Psychological ☒

Drugs

Educational

Others (Indicate) ☒

Juvenile Record

Superintendent - Warden RECOMMENDATION

Parole

Reparole ☒

Refuse

Others (Indicate)

ANALYSIS

Board Action recorded 11/5/93 refers to Board Action of 11/10/92 to Recommit to a SCI as a CPV to serve 40 months backtime . . . Reparole 3/25/93 to State Detainer Sentence. Board Action recorded 11/23/93 modifies Board Action of 11/5/93 by correcting Reparole date to 3/25/97. Board Action recorded 4/22/97 was to modify Board Action of 11/23/93 and 11/5/93 by temporarily rescinding the Reparole portion due to misconducts and now list for reinterview on the next available docket. Subject was added to the June docket.

Currently, the subject is a 45 year old married male recommitted by the Board for a new conviction - rape of his stepdaughter. He is originally serving a 10 to 20 year sentence for armed robbery. Official Version reports he used a 45 caliber handgun in this robbery. Subject was received at SCI HD 5/8/96 from SCI Dallas. His Prescriptive Program Plan included No Misconducts, Good Housing and Work Reports, D/A Education, Stress/Anger, Sex Offender Programming. He received 1 Class I Misconduct 11/6/96 for Refusing To Obey An Order and was sanctioned with 30 days cell restriction. He Earns Above Average Housing and Work Reports (assigned to Culinary Department). He is presently assigned as Blockworker.

Psychological evaluation conducted 6/16/97 notes:

Subject denies any substance abuse history. During his interview with the evaluator, he responded with a sarcastic manner stating that coming up for parole was 'bullshit' and 'the Parole Board screws everybody'. The subject was extremely angry. The evaluator noted that due to his denial of his sex offense and lack of treatment, he is not appropriate for parole at this time. The evaluator recommended he needs to participate in Sex Offender Treatment prior to any consideration for parole release.

PETITIONER'S
EXHIBIT

F

SUMMARIZATION REPORT FOR Robert DeFoy, AK-1017/1226-J

PAGE 2

ANALYSIS CONTINUED:

On 4/9/97 the Records Office notified this writer subject may receive a new trial on this matter. On 4/11/97, this writer spoke with the subject. The subject threatened to sue this writer for him not being released. In a letter dated 5/22/97 from York County reports the subject was granted a new trial regarding his detainer sentence. Bail was granted in the amount of \$20,000 which has been posted.

Subject Has Secured Institutional Support for Reparole.

PAROLE GUIDELINES

He is viewed as an Acceptable Parole Candidate under the Guidelines.

DETAINERS

None listed.

PLAN

Parole Plan approved 5/19/97 by the York SO.

PAROLE STAFF RECOMMENDATION INCLUDING SPECIAL CONDITIONS:

Parole Reparole Continue Refuse ☒


Frederick L. Cutler, Parole Agent II

6/18/97

Date

D76
I/S
6-18-97

CONFIDENTIAL PSYCHOLOGICAL EVALUATION - Parole
 Re: Robert DeFoy, AK-1017

June 16, 1997

The following is a confidential psychological evaluation. This information may be reviewed by; health care, corrections counseling staff, inmate program manager, deputy superintendents, superintendent and the treatment team. All others shall not be permitted to review or share this information with persons who are not members of the treatment team.

Mr. DeFoy was interviewed on June 17, 1997 to provide updated information for his parole evaluation. Mr. DeFoy is serving backtime on his original sentence of 10-20 years for Armed Robbery. He violated the conditions of his parole by being charged with Involuntary Deviate Sexual intercourse, Statutory Rape and Corruption of a Minor. Mr. DeFoy received an additional 6 1/2 - 13 year sentence.

Mr. DeFoy is a 45 year old White male. He is the fifth of twelve children growing up in a single parent household. His parents divorced when he was quite young. His mother paid little attention to Mr. DeFoy and his brothers. He stated that she paid more attention to the girls. Mr. DeFoy denies any substance abuse history.

In the interview setting, Mr. DeFoy responded in a sarcastic manner stating that coming up for parole is "bullshit" and the parole board "screws everybody." Mr. DeFoy was extremely angry. He impressed as being within the Below Average range of intelligence. There is no history of mental illness or psychiatric treatment.

In Summary, due to Mr. DeFoy's denial of his sex offense and lack of treatment, he is not appropriate for parole at this time. Mr. DeFoy needs to participate in Sex Offender treatment prior to any consideration for parole release.

Submitted by.

Lori Ford

Lori Ford, Psychology Intern

Reviewed by.

Carrie A. Fromm

Carrie Fromm, Licensed Psychology Mgr.
 License #PS007121L

LF/CAF:cjh

c: Medical Records (orig.)
 Records
~~Counselor~~
 Parole
 File

PETITIONER'S
 EXHIBIT

6

PA BOARD OF PROBATION AND PAROLE

PBPP-361 (4/98)

OFFENDER NAME ROBERT DeFOY PAROLE NUMBER 1226-J
 DATE OF INTERVIEW 10/24/00 INSTITUTION HOUTZDALE AK-1017
 TYPE OF INTERVIEW: ☐ Minimum ☐ Review ☒ Reparole Review ☐ Application

PAROLE DECISION MAKING GUIDELINES

I PAROLE PROGNOSIS ASSESSMENT

INSTRUCTIONS: Information on age-at-interview, total convictions, PPA offense code, and total probation, parole, or intermediate punishment revocations should be provided in Column 1. Technical parole violations and convicted parole violations are to be counted separately. The appropriate risk classification score in Column 2 should be placed in Column 3 and subsequently added together in the total PPA score box. Based upon the total score number, the offender may then be classified into a risk category according to the range of scores shown at the bottom of the instrument. Offenders with multiple offenses should have each offense ranked in ascending score order according to the offense ranking at the bottom of the page. This process results in a risk assessment which is sensitive to potential future crime. Column 4 may be used to reassess a case if the interview suggests that the assessment information was incorrect.

COLUMN 1 Variable	COLUMN 2 Score Allocation for Risk Assessment	COLUMN 3 Initial Classification Score	COLUMN 4 Current Classification Reassessment Score
Age at Interview: <u>48</u> yr. Minimum Sentence Date <u>9/29/82</u>	0 if 40 years or older 21 if 26-39 years 38 if 26 years or younger	_____	<u>0</u>
Total Criminal History Record of Convictions: Number: <u>3</u>	0 if no convictions 9 if 1 or 2 convictions 26 if 3 or more convictions	_____	<u>26</u>
PPA Offense (Ranked According to Index) 1. <u>Robbery</u> 2. _____ 3. _____ 4. _____ 5. _____	0 if not elsewhere classified 20 if theft, fraud, burglary, or robbery	_____	<u>20</u>
Probation Revocations <u>0</u> Parole Revocations <u>1</u> Intermediate Punishment Revocations <u>0</u> Total: <u>1</u>	0 if none 16 if 1 or more	_____	<u>16</u>
TOTAL P.P.A. SCORE			<u>62</u>

Parole Prognosis Assessment Score Based on Recidivism Check One 71-100 High Risk ☐ 45-70 Medium Risk ☒ 0-44 Low Risk ☐
 Instant Offense in descending recidivism order: 1) Theft/Fraud, 2) Burglary, 3) Robbery, 4) Aggravated Assault, 5) Drug Law Violation, 6) Arson & Miscellaneous, 7) Simple Assault & Kidnapping, 8) Sex Offenses, 9) Manslaughter, 10) Murder.

II POTENTIAL ASSAULTIVENESS/DANGEROUSNESS SCREEN

Assaultiveness is a course of conduct that presents, or is calculated to present, a danger or perceived danger to any person. An Assaultive instant offense is defined as any single conviction offense for the current sentence of the following type: murder, manslaughter, voluntary manslaughter, rape, all sex offenses, robbery, kidnapping, aggravated or simple assault, assault by prisoner, assault by life prisoner, extortion accompanied by threats of violence, arson, burglary (residential), weapon law violations, or homicide by vehicle.

Official Versions of facts of crime are required for all offenses in the definition above prior to final Board Action.

- Does the offender have an assaultive instant offense based upon the definition above, or based upon the official version of the offense in the case of a plea bargain? Yes ☒ No ☐
 If the answer to the above question is "yes", mark a score of 1 on p. 2, III (7), and answer the following question.
 If the answer to the above question is "no", stop here.
- Does the offender have a documented mental health problem requiring treatment in the form of either individual or group therapy/counseling and/or psychotropic medication? (Rape and all other assaultive sex offenses require a "yes" answer.) Yes ☐ No ☒
 If the answer to the above question is "yes", mark the offender as having a very high assault potential with a score of (3) on p. 2, III(8) and stop here.
 If the answer to #2 is "no", answer the following question.
- Did the offender have any institutional problems/misconducts which were assaultive in nature within the last 12 months or the last one-half of the time served to date, whichever is longer? Yes ☐ No ☒
 If the answer to the above question is "yes", mark _____ high assaultive potential with a score of (2) on p. 2, III(9).

PETITIONER'S
EXHIBIT

III PAROLE CONSIDERATION FACTORS

Each unfavorable factor listed below is a possible reason for refusing parole/reparole as a matter of policy. Select the appropriate column from the PPA on p. 1. If the response to a specific unfavorable factor is in the affirmative, the appropriate score must be entered. If the response is in the negative, a 0 goes in the blank space provided. Enter the total score of unfavorable factors at the bottom of the appropriate column.

REASON FOR PAROLE REFUSAL		SCORE	PAROLE PROGNOSIS ASSESSMENT		
			HIGH RISK	MEDIUM RISK	LOW RISK
Unfavorable Factors from Institutional Performance:					
1) Three or more Class II misconducts, or two Class II and one Class I misconduct, during the last 12 months or the last one-half of the minimum sentence, whichever is longer.	1				
2) Two or more Class I misconducts during the last 12 months, or the last one-half of the minimum sentence, whichever is longer.	1				
3) Open charges (prima facie case established) for new crime; or new conviction while serving this prison sentence.	2				
4) Removed from CCC, Boot Camp, work release or prerelease for cause.	2				
Unfavorable Factors from Criminal History Record:					
5) History of prior substance abuse or sales of illegal drugs	2			0	
6) Habitual Offender	1			0	
Unfavorable Factors from Instant Offense:					
7) Assaultive Instant Offense (from page 1, II (I))	1			1	
8) Very high assaultive behavior potential (from page 1, II (2))	3			0	
9) High assaultive behavior potential (from page 1, II (3))	2			0	
10) Victim Injury	2			0	
11) Weapon involved in the commission of offense (specify)	1			1	
Firearm					
Knife					
Other					
TOTAL UNFAVORABLE FACTOR SCORE				2	
PAROLE POLICY GUIDELINE RECOMMENDS REFUSE IF TOTAL SCORE IS:			5 or more	6 or more	7 or more

Guideline Policy Recommendation:

Parole/Reparole ☒

Refuse ☐

DEFINITIONS:

- Open Charges** - This refers to new criminal charges being filed while on pre-release or as a result of criminal conduct at a correctional facility. If open charges are to be accepted as a basis for parole refusal, a prima facie case must have been established.
- Substance Abuse** - There is a record of substance abuse, or sale of a controlled substance, which lead to police arrests and/or clinical determinations.
- Habitual Offender** - This refers to a person who has a total of three or more convictions for similar types of offenses in his criminal history. For example, they may be convictions for burglary or robbery, or for drug violations. Also, a person is included who simply appears to have developed a criminal life style based upon four or more convictions which may be dissimilar. A corollary concept refers to a person in syndicated or organized crime.
- Victim Injury** - The official version of the offense must indicate physical injury to the victim of the crime, however slight. In cases of sexually assaultive behavior, psychological injury to the victim is also frequently the case; therefore, in all cases of sexual assault, an unfavorable factor score of 2 is to be entered.
- Weapon** - The official version of the offense must place the defendant or codefendant(s) in actual or constructive possession of a weapon. The definition of weapon contained in Board regulations states: "Anything capable of causing harm to or intimidating another, possessed under circumstances not manifestly appropriate for any lawful use that the object may have." In a crime such as "homicide by vehicle," the vehicle would not be a weapon under the above definition unless: 1) there was a DUI involved, or; 2) there was a clear intent to harm the victim by using the vehicle as a weapon. Under both exceptions, the circumstances were not manifestly appropriate for any lawful use according to our definition.

Last BA 7/21/98

Max: 6/7/01

York Co detainer (6 1/2 - 13 yrs) IDS1, Stat Regre, CMM

DOC does not support

Cust level 3

No program involvement. No SOT.

Robbery committed in the 70's.

Last on parole in 1985.

New charge in 91. Thinks he has two years credit toward detainer.

Sex offense is on appeal. This is in federal court in Scranton, he thinks.

Expects to max this on and turn over to new one.

Decision Outcome and Guideline Consistency: the Guideline Recommendation (from Page 2) is:

Refuse ☐

Instructions: The initial and date space on this page is to be completed for a "continue" decision only. Final decisions are checked on the last page of this document. If the case has been continued, for whatever reason, the final decision can be initiated on this page with the appropriate block checked in Section VIII.

Victim Information Needed

(Confidential. . . Do not list on Board Decision.)

- ☐ 1) **Continue:**
- ☐ a) pending receipt of an approved home plan
 - ☐ b) pending receipt of information (Specify Non-Victim Info.)

 - ☐ c) pending successful adjustments to Community Corrections Center, review in _____
 - ☐ d) pending disposition of criminal charges
 - ☐ e) pending disposition of detainer(s)

Initial and Date

Reason for Board Decision:

Following an interview and review of your file, the Pennsylvania Board of Probation and Parole has determined that the mandates to protect the safety of the public and to assist in the fair administration of justice can be achieved through your release on parole. You are therefore:

- ☐ 2) Paroled to Approved Plan
- ☐ 3) Paroled to a Community Corrections Center for a minimum of _____ months. Must have a job/home prior to release from the Center.
- ☐ 4) Paroled to in-patient _____ treatment program; approved home to be available (must sign appropriate release form for confidential information.)
- ☐ 5) Paroled to an approved plan, on or after _____, upon condition that there are no misconducts and subject to the following special conditions.

- ☐ 6) **Parole to Detainers:**
- ☐ To Board/backtime detainer sentence only;
- ☐ To State Sentence;
- ☐ while confined must participate in _____
- ☐ _____
- ☐ To other detainer sentence; approved home to be available
- Check one:
- ☐ County ☐ Sentence ☐ Untried Case
- ☐ Other State (approved home necessary if untried Case)
- ☐ Federal ☐ Sentence ☐ Untried Case
- ☐ Violation of Probation/Parole
- ☐ Immigration and Naturalization
- ☐ When released to the community, special conditions as prescribed imposed.
- ☐ Other: _____

VI SPECIAL CONDITIONS OF PAROLE

WHEN PAROLED OR AFTER SUCCESSFUL COMPLETION OF THE IN-PATIENT PROGRAM, YOU MUST COMPLY WITH THE FOLLOWING SPECIAL CONDITIONS OF PAROLE:

Imposed	Mandatory (Board Only)	
		Out-patient (drug/alcohol/sex offender/mental health/other _____) treatment [circle] is a special condition of your parole supervision until the treatment source and/or parole supervision staff determine it is no longer necessary. You shall be required to sign the appropriate release form for confidential information.
		You shall participate in TASC and follow all treatment recommendations.
		Upon your release on parole, you shall be evaluated to determine your need for (drug/alcohol mental health/other: _____) treatment [circle]. Prior to the evaluation being conducted, you shall be required to sign the appropriate release form for confidential information. If the evaluation reveals that treatment is indicated, this special condition of parole shall be amended to include other appropriate special conditions imposed by your parole agent.
		You shall submit to urinalysis testing.
		You must achieve negative results in screening tests randomly applied for the detection of the presence of controlled substances or designer drugs and you must pay the cost of the tests (Act 97- _____).
		You shall not consume or possess alcohol under any conditions or for any reason.
		You shall not enter establishments that sell or dispense alcohol (except as approved by the supervision staff.)
		You shall not directly or indirectly contact or associate with persons who sell or use drugs outside a treatment setting.
		You shall take psychotropic medication if prescribed by your doctor.
		You shall support your dependents, if any.
		You shall not contact or associate with _____, and/or the co-defendant(s) for any reason.
		You shall maintain (employment/vocational training/educational training/other: _____) [circle] as approved by parole supervision staff.
		You shall engage in an active job search during any period of unemployment, and provide verification as directed by parole supervision staff.
		You shall not travel or reside in _____ (county, city, town) for any reason.
		You shall develop and provide proof of establishment of a restitution repayment plan within 72 hours of release and comply with the restitution repayment plan.
		You shall not have contact with victim(s), including correspondence, telephone contact, or communication through third parties.
		You shall be placed on electronic monitoring for _____ days and during periods of unemployment.
		You shall be placed on curfew restrictions for _____ days and during period of unemployment.
		You shall attend a community support group program (i.e., Twelve Steps, Alcoholics Anonymous, Narcotics Anonymous) for _____.
		You shall abide by the conditions established for sex offender treatment.

You shall not open, maintain, or have physical control of any checking, savings, or credit account in your or another's name, unless approved in advance and in writing by parole supervision staff.

Removal or termination from the in-patient program, community corrections center, or contract facility for any reason is a violation of your parole.

Other: _____

Age Group	Percentage
18-24	10%
25-34	20%
35-44	25%
45-54	20%
55-64	15%
65-74	10%
75-84	5%
85+	5%

SPECIAL INSTRUCTIONS TO PAROLE SUPERVISION STAFF:

[illegible]

VII DECISION TO REFUSE PAROLE
 Decision Outcome and Guideline Consistency: the Guideline Recommendation (from Page 2) is:

Parole/Reparole ☐

Refuse ☐

Reason for Board Decision:

Following an interview and review of your file the Pennsylvania Board of Probation and Parole has determined that the mandates to protect the safety of the public and to assist in the fair administration of justice cannot be achieved through your release on parole. You are therefore refused parole and order to:

☒ serve your unexpired maximum sentence.

☐ serve your unexpired maximum sentence, due to your negative interest in parole.

☐ be reviewed in _____.

☐ be review in _____, or earlier, if recommended by the Department of Corrections/County Prison staff because of demonstrable benefit from participation in an appropriate treatment program(s).

At your next interview, the Board will review your file and consider:

☐ a) whether you have successfully completed a treatment program for:

☐ sex offenders

☐ mental health problems

☐ substance abuse

☐ impaired adjustment

☐ other: _____

☐ b) whether you have received a favorable recommendation for parole from the:

☐ prosecuting attorney

☐ warden of county prison

☐ sentencing judge

☐ Department of Corrections

☐ c) whether you have maintained a clear conduct record and completed the Department of Corrections prescriptive program(s).

☐ d) other: _____

☐ e) _____ to be available at time of review.

Parole/
Reparole

Refuse

Reaffirm

1. Interviewer *Andrew J. Mull* Date *10/24/00*
2. ^{*Prison*} Board Member *JR Cook* Date *10/24/00*

☐
☒
☐
☐
☒
☐

*Last RedFile info is
from 1982 on onion skin.*

Remarks: _____

3. Board Member _____ Date _____

☐
☐
☐

Remarks: _____

4. Board Member _____ Date _____

☐
☐
☐

Remarks: _____

5. Board Member _____ Date _____

☐
☐
☐

Remarks: _____

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

PBPP-382 (7/97)
Robert DeFoy, AK-1017

Month
of

Interview October 2000
SCIHD/Docket # 30

REVIEW SUMMARIZATION REPORT

NAME Robert DeFoy INST. & NO. SCI Houtzdale/AK-1017 PAROLE NO. 1226-J
☐ Minimum ☐ Review ☒ Reparole/Review ☐ Parole Application

Fines, Costs, Restitution: ☒ None Listed Costs: _____ Fines: _____ Restitution: _____

Source DC-16D

PROBLEM AREAS

☒ Assaultive ☒ Sexual ☐ Vocational ☐ Alcohol
☒ Psychiatric/Psychological ☐ Drugs ☐ Educational ☒ Others: Juvenile

SUPERINTENDENT - WARDEN RECOMMENDATION

☐ Parole ☐ Reparole ☒ Refuse ☐ Others

GUIDELINE RECOMMENDATION: ☒ Re-Parole ☐ Refuse

ACT 97: ☐ 97-O ☐ 97-1 ☐ 97-2 ☐ 97-3 ☒ N/A

CRIME VICTIMS COMPENSATION PAYMENT: \$30.00 Payment Verified ☐ Yes ☒ No

DNA REGISTRATION REQUIRED: ☒ Yes ☐ No if yes, has it been completed: ☐ Yes ☐ No

MEGAN'S LAW REGISTRATION REQUIRED: ☒ Yes ☐ No

ANALYSIS

Current Sentence

Subject, age 48, is serving 40 months backtime as a Convicted Parole Violator on an original 20-year sentence for Robbery from the Courts of Erie County. The PV max has been established as 6-7-01.

Last Board Action

Board Action of 7-21-98 refused parole and established an October 2000 review date.

Board Stipulations

1. Prescriptive Program Plan
2. Maintain Clear Conduct Record
3. Participate in a treatment program for Sex Offenders

Was Stipulation Completed

☐ Yes ☒ No ☐ Other
☐ Yes ☒ No ☐ Other
☐ Yes ☒ No ☐ Other

Institutional Adjustment

Since his last parole interview, he has earned very good housing and work reports and has consistently done this since his reception at SCI-Houtzdale; however, there has been no program involvement since the last Review. Subject refuses to participate in Sex Offender treatment. Based upon his refusal, the Institution does not support parole at this time.

PETITIONER'S
EXHIBIT

2

PBPP-382 (7/97)
Robert DeFoy, AK-1017

Mental Health Evaluation

A Mental Health Evaluation was prepared by the Department of Corrections on 5-31-00 and reports that there are no indications of significant psychopathology which will require intervention at this time. His self-concept appears to involve a generally stable and positive self-evaluation. He is somewhat distant in personal relationships and is unconcerned about opinions of others. He appears to exhibit control over his impulses and behaviors as demonstrated by his positive adjustment. His level of risk to the community appears to be minimal. At present, however, he refuses to complete any treatment programming for Sex Offenders, which was the stipulation established by the Board. Subsequently, he is ineligible for Reparole.

Parole Alternatives

Detainers: 1-25-93 York County 6 years, 6 months - 13 years for IDSI, Statutory Rape, and Corruption of Minors

If paroled, Guidelines:

- ☒ Must abide by all of the requirements of a Community Corrections Center
- ☒ Out-patient treatment ☒ Drug ☒ Alcohol ☒ Sex Offender ☐ MH ☐ Other
is a special condition of parole supervision until treatment source and/or parole supervision staff determine it is no longer necessary. Required to sign appropriate confidential info release forms
- ☒ Upon release, be evaluated to determine need for ☒ Drug ☒ Alcohol ☒ Sex Offender
Prior to eval, required to sign confidential info release forms. If eval reveals treatment is indicated, this special condition of parole will be amended to include other appropriate special conditions imposed by PA.
- ☒ Must submit to ☒ Urinalysis ☐ Mandatory Urinalysis testing ☐ Pay for as per Act 97-0
- ☒ Must not consume alcohol under any conditions for any reason
- ☒ Must not enter establishments that sell or dispense alcohol
- ☒ Must not contact or associate w/persons selling drugs, drug users outside of a treatment setting
- ☒ Must take psychotropic medication if prescribed by your doctor
- ☒ Must support your dependents
- ☒ Must not contact or associate w/victim or victim's family for any reason
- ☒ Must maintain Employment, Vocational Training, or Educational Training as approved by parole supv staff
- ☒ Must engage in active job search during any period of unemployment and provide verification as directed by parole supv staff

If refused, Guidelines:

- ☒ Must participate in Prescribed Programming, to include Substance Abuse Treatment, and Sex Offender Treatment
- ☒ Maintain Clear Conduct Record
- ☒ Earn Institutional Recommendation for Parole

Parole Planning

A parole plan was approved by the York Sub Office on 9-18-00. Residing address will be with his wife in Stewardstown, PA, who has offered to support him.

Attachments

- | | |
|---|---|
| <input checked="" type="checkbox"/> Minimum Summarization Packet/Report | <input checked="" type="checkbox"/> DC-13A Reclassification Summary |
| <input checked="" type="checkbox"/> Mental Health Evaluation | <input type="checkbox"/> Misconducts |

Date 10-19-00

Parole Agent, Thomas J. Janocko

Barbara L. Kline 10/23/00
Parole Supervisor, Barbara L. Kline



Martin F. Horn
Commissioner

William E. Speck
Deputy Superintendent for
Facilities Management

Pennsylvania Department of Corrections
State Correctional Institution at Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000

John M. McCullough
Superintendent

Phone: (814) 378-1000 FAX: (814) 378-1030

J. Barry Johnson
Deputy Superintendent for
Centralized Services

July 11, 2000

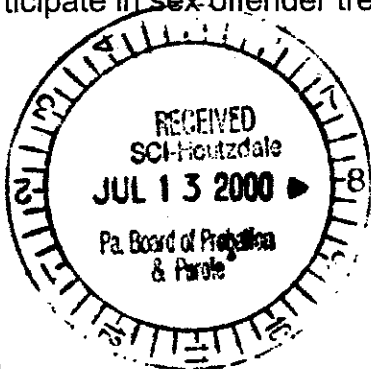
The Honorable William Ward, Chairman
Pennsylvania Board of Probation and Parole
P.O. Box 1661
Harrisburg, PA 17105

RE: DeFoy, Robert, AK1017

Dear Chairman Ward:

Mr. DeFoy is an addition to the August Parole Docket due to material from the PBPP Central Office in Harrisburg not being available for his originally scheduled interview, therefore this update is being submitted in letter form.

Mr. DeFoy, age 48, is currently a convicted parole violator serving backtime on an original 10 to 20 year sentence for Robbery. The minimum and maximum expiration dates are 9-29-82 and 6-7-01. He currently has a 6 ½ to 3 year re-entry detainer for Statutory Rape, IDSI and COMM. Since the original 13A dated 4-25-00, Mr. DeFoy has continued to earn above average housing/work reports. However, he continues to refuse to participate in sex-offender treatment, therefore Staff continues to not support parole.



Sincerely,

John McCullough
John M. McCullough
Superintendent

JMM/MMI/sjh

c: DC-14
DC-15
file

APW 10/24/00 *Dre 10/24/00*
PETITIONER'S
EXHIBIT
J

DC-13A

CONFIDENTIAL

RECLASSIFICATION SUMMARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONSCHECK ☒ PAROLE SUMMARY ☐ REPAROLE SUMMARY
TOPIC ☐ OTHER _____

PREPARED AT SCI-Houtzdale DATE 4-25-00

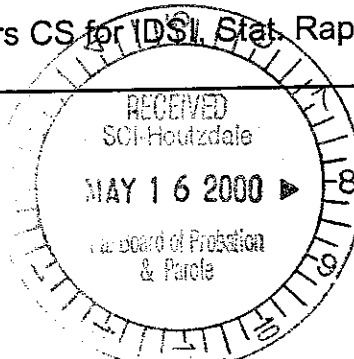
SID NUMBER 19268847	DC NUMBER AK-1017	PBP NUMBER	NAME DeFOY, Robert		AGE 48	
EXPIRATION MINIMUM 1-29-72	EXPIRATION MAXIMUM 9-29-82	EFFECTIVE DATE 9-29-92	TIME SERVED TO DATE	EXPIRATION OF 1/2 MINIMUM	EFFECTIVE DATE OF PV RETURN	CLASS STATUS 3
PBP DOCKET STATUS	<input type="checkbox"/> FIRST HEARING <input type="checkbox"/> REVIEW HEARING	TOTAL ARRESTS	JUVENILE ARRESTS	JUVENILE COMMITMENTS	ADULT ARRESTS	CONVICTIONS
						COMMITMENTS
						PROBATION VIOLATIONS
						PAROLE VIOLATIONS

ACCOMPLICE(S) AND KNOWN DISPOSITION(S)

None Listed

SENTENCE STATUS CHANGE AND/OR DETAINER(S) STATUS
CP#:3623;91 - 1-25-93, York County - 6 1/2 to 13 years CS for IDSI, Stat. Rape, Corrupt Minors**MISCONDUCTS:**

See attached DC-17.

Steve Kechisen
Corrections Counselor II**EDUCATIONAL/VOCATIONAL:** WRAT scores dated 3-84 revealed:
READING, 6.9; SPELLING, 5.7; ARITHMETIC, 5.3

Mr. DeFoy resides on C Unit.

Melissa Miller
Education Department**VOCATIONAL:**

Mr. DeFoy arrived at SCI-Houtzdale on 5-7-96 and was assigned to Culinary PM and Blockworker.

Susan McQuillen
Corr. Emp./Voc. Coordinator**MEDICAL:** Medical History: +PPD, History WPW
On-Going Treatment: Chronic Clinic
Medications: NTG
Vision: Last Exam 2-95 Dental: Last Exam 3-96
Physical Limitations: No heavy lifting

Medical Department

PETITIONER'S
EXHIBIT

K

CONFIDENTIAL

MENTAL HEALTH EVALUATION: A Mental Health Evaluation will be forwarded to the Institution Parole Office as requested by the Parole Office Supervisor.

Steve Kechisen
Corrections Counselor II

SEX OFFENDER TREATMENT: Sex offender programming has been recommended. Mr. DeFoy denies guilt and refuses to participate.

Steve Kechisen
Corrections Counselor II

DNA ACT NOTIFICATION: A DNA sample material will be required when he turns over to his detainer sentence.

Steve Kechisen
Corrections Counselor II

PRE-RELEASE: Mr. DeFoy has not participated in any form of pre-release programming since his arrival at SCI-Houtzdale.

Steve Kechisen
Corrections Counselor II

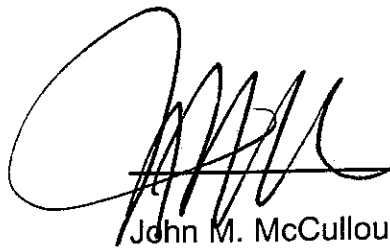
COUNSELOR'S EVALUATION: Mr. DeFoy, age 48, is a convicted parole violator serving backtime (40 months) on an original 10 to 20 year sentence for Robbery. He currently has a 6 ½ to 3 year detainer sentence for IDSI, Statutory Rape and Corrupting the Morals of a Minor. Mr. DeFoy was refused reparole at his last review and as recorded on 7-21-98 will be reviewed in June 2000.

Mr. DeFoy was received at Houtzdale 5-8-96 from SCI-Dallas. Since his last parole interview, he has earned very good housing/work reports and has consistently done this since his transfer to Houtzdale. However there has been no program involvement since his last review.

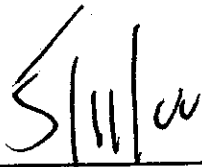
Steve Kechisen
Corrections Counselor II

STAFF RECOMMENDATIONS:

Mr. DeFoy, age 48, is currently serving backtime on an original 10 to 20 year sentence for the offense of Robbery With Accomplice. He has a 6 ½ to 13 year detainer sentence for the offenses of IDSI, Statutory Rape and Corruption Morals of Minor. He refuses to participate in sex offender treatment. Based upon his refusal to participate in sex offender treatment, Staff does not support parole. He was informed of this decision and all aspects of Act 159.



John M. McCullough, Superintendent



Date

JMM:SK:sjh